

**Exhibit A**

Confirmation Hr'g Tr.

*In re CareMax, Inc.*, No. 24-80093 (MVL) (Bankr. N.D. Tex. Jan. 28, 2025)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In Re: ) **Case No. 24-80093-mvl-11**  
)  
) Dallas, Texas  
CAREMAX, INC., et al., ) January 28, 2025  
) 9:30 a.m. Docket  
Debtors. )  
) OMNIBUS HEARING  
)

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MICHELLE V. LARSON,  
UNITED STATES BANKRUPTCY JUDGE.

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24  
25 Proceedings recorded by electronic sound recording;  
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1                   DALLAS, TEXAS - JANUARY 28, 2025 - 10:28 A.M.

2                   THE CLERK: All rise. The United States Bankruptcy  
3 Court for the Northern District of Texas, Dallas Division, is  
4 now in session, the Honorable Michelle Larson presiding.

5                   THE COURT: Please be seated. Good morning,  
6 everyone. We are here on our 9:30 docket. We have one matter  
7 on the docket this morning, and that is Case No. 24-80093,  
8 CareMax, Inc. I'll go ahead and take appearances for the  
9 record, and I'll start with those in the courtroom, and then I  
10 will announce the roll call that I have for WebEx, and then  
11 any other folks who want to make an appearance can do so at  
12 that time.

13                  So, please, Mr. Grossi?

14                  MR. GROSSI: Good morning, Your Honor. Anthony  
15 Grossi, Sidley Austin, counsel for the Debtors, joined here  
16 today by my partner Mr. Tom Califano, Mr. Jon Muenz, Mr. Jason  
17 Hufendick, and Ms. Juliana Hoffman. Thank you, Your Honor.

18                  THE COURT: All right.

19                  MS. ELKIN: Good morning, Your Honor. Judith Elkin,  
20 Pachulski Stang Ziehl & Jones, for the Official Committee of  
21 Unsecured Creditors. And I am joined by my partners Rob  
22 Feinstein and John Morris, who are in the courtroom here.

23                  THE COURT: All right.

24                  MS. ELKIN: Thank you. I think I have a couple of  
25 partners on the phone, but I'll let you go through that list

1 separately.

2 THE COURT: Excellent. Thank you.

3 Ms. Kippes?

4 MS. KIPPES: Good morning, Your Honor. Meredyth  
5 Kippes on behalf of the United States Trustee.

6 THE COURT: Good morning.

7 MR. ROOSE: Good morning, Your Honor. Matthew Roose  
8 of Ropes & Gray on behalf of the First Lien Term Loan Lenders  
9 and DIP Lenders. Thank you.

10 THE COURT: Good morning.

11 MS. LIGGINS: Good morning, Your Honor. Demetra  
12 Liggins with McGuire Woods. I also have in the courtroom with  
13 me my partner, Shawn Fox, and Cassandra Shoemaker. We have  
14 some other lawyers on the phone. We're on behalf of  
15 ClareMedica Viking. Our client is also on the phone, Your  
16 Honor: Ren Mullinix.

17 THE COURT: Okay. Thank you very much.

18 MS. LIGGINS: Thank you.

19 MR. GAITHER: Good morning, Your Honor. John Gaither  
20 and Doug Buncher, conflicts counsel to the Debtors.

21 THE COURT: Good morning. It's been a while, Mr.  
22 Gaither. Nice to see you guys.

23 MR. ROY: Good morning. Casey Roy with Ross, Smith &  
24 Binford on behalf of Suzanne Koenig, the Patient Care  
25 Ombudsman.



1 THE COURT: Thank you. All right. So that is  
2 everyone that is in the courtroom --

3 MS. JOHNSON: Hello.

4 THE COURT: -- that wishes to make an appearance.  
5 I'll now turn to the electronic roll and announce who's made  
6 an appearance that way.

7 With Dinsmore & Shohl, I have Ms. Sarah Mattingly for  
8 Humana.

9 On behalf of PAW Holdings, with the Winderweedle Haines  
10 law firm, I have Christopher Andrew Roy.

11 On behalf of some Landlord creditors, with Kelley Drye, I  
12 have Steven Yachik. I hope I'm pronouncing that properly.

13 On behalf of Cigna Health & Life Insurance, with Connolly  
14 Gallagher, I have Mr. Jeffrey Wisler.

15 On behalf of the United States of America, I have I-Heng  
16 Hsu.

17 Also on behalf of the Official Committee of Unsecured  
18 Creditors, with the Pachulski firm, I have Mr. Brad Sandler.  
19 And with Sills Cummis & Gross, I have Jason Teele.

20 MR. TEELE: Good morning.

21 THE COURT: On behalf of Cardinal Health, with CSG  
22 Law, I have Terri Freedman.

23 On behalf of ClareMedica Viking, with McGuire Woods, I  
24 have Mr. Jacob Broadway.

25 On behalf of -- I'm trying to skip over those that have

1 made appearances -- on behalf of the SEC, I have Ms. Jolene  
2 Wise.

3 MS. JOHNSON: Hello?

4 THE COURT: On behalf of Preferred Care Network,  
5 Inc., Preferred Care Partners, Inc., and UnitedHealthcare,  
6 with Ferguson Braswell, I have Ms. Rachael Smiley. And with  
7 Shipman & Goodwin, I have Nicole Lapenta.

8 On behalf of Thompson Logistics Assets with the --

9 A VOICE: If the courtroom deputy can hear us, the  
10 virtual participants have lost audio.

11 THE COURT: Okay. Thank you very much for letting us  
12 know.

13 MS. JOHNSON: Hello? Hello?

14 THE COURT: All right. Let me see if I can -- I've  
15 got some folks in the courtroom with the Court that are  
16 listening in, so I can try to test it.

17 MS. JOHNSON: Hello. My name is Jo Ann Rainbow Heart  
18 Johnson, if anyone can hear me.

19 A VOICE: I can hear you, but it seems like the  
20 Court's line is on mute.

21 MS. JOHNSON: Okay.

22 (Pause.)

23 OPERATOR: This meeting is being recorded and  
24 summarized.

25 (Pause.)

1 THE COURT: All right. Are we good, Ms. Jeng?

2 THE CLERK: Yes.

3 THE COURT: All right. So we're back on. I have  
4 heard from, again, my staff that folks were probably able to  
5 hear me through the McGuireWoods group. So I'll just repeat  
6 that one, which is Mr. Jacob Broadway on behalf of ClareMedica  
7 Viking.

8 With the SEC, it's Jolene Wise.

9 MS. JOHNSON: Hello. It's --

10 THE COURT: I'm going to finish the roster I have.  
11 Ms. Jolene Wise with the SEC.

12 With Preferred Care Network, Preferred Care Partners, and  
13 UnitedHealthcare, with the Ferguson Braswell firm, I have Ms.  
14 Rachael Smiley. And with Shipman and Goodwin, I have Ms.  
15 Nicole Lapenta.

16 On behalf of Thompson Logistics, with the Munsch Hardt law  
17 firm, I have Ms. Deborah Perry.

18 On behalf of the Ad Hoc Group of Unaffiliated Holders of  
19 Term Loans, with the Kelly Hart & Hallman law firm, I have  
20 Robbie Clarke.

21 And the final name on my list is Ms. Michelle Shriro with  
22 Singer & Levick on behalf of Kimco Realty Corporation.

23 Is there anyone on WebEx that would like to make an  
24 appearance that I haven't called.

25 MS. JOHNSON: Yes, please.

1 THE COURT: Please proceed.

2 MS. JOHNSON: My name is Jo Ann Rainbow Heart  
3 Johnson. I'm a patient and a victim and am seeking up to a  
4 million dollars for being illegally Baker Act-ed. And I just  
5 want to explain quickly that they -- they gave me the wrong  
6 records to a different patient. They had access to other  
7 patients' documents inside of an activity cart.

8 THE COURT: Okay.

9 MS. JOHNSON: People left their records laying out.

10 THE COURT: Ms. Johnson? Ms. Johnson?

11 MS. JOHNSON: Yes. So I just want --

12 THE COURT: Okay. Well, all I'm doing at this point  
13 is taking appearances. And I have your --

14 MS. JOHNSON: Okay.

15 THE COURT: I have your name down. So, as we go  
16 through the appearances, I'll turn to you in a moment to see  
17 kind of what your issues are.

18 MS. JOHNSON: Okay.

19 THE COURT: Have you participated in the bankruptcy  
20 to date?

21 MS. JOHNSON: I have filed notices and everything and  
22 they've sent me the documents to file and that I was able to  
23 participate in today's hearing.

24 THE COURT: Okay.

25 MS. JOHNSON: As a victim and -- I was advised.

1 That's how I was able to log in. So, thank you, Your Honor.  
2 I appreciate it.

3 THE COURT: You're welcome, Ms. Johnson.

4 All right. Is there anyone else who wishes to make an  
5 appearance from WebEx?

6 MR. BRESCIA: Yes. Good morning, Your Honor. This  
7 is Duane Brescia with the law firm of Clark Hill on behalf of  
8 Atlantic Specialty Insurance Company. We did file a limited  
9 objection, but I think it's resolved.

10 THE COURT: Okay. Thank you very much, Mr. Brescia.

11 MR. CANDEL: Good morning, Your Honor. Peter Candel  
12 with Kirkland & Ellis on behalf of the ACO Purchaser.

13 THE COURT: Good morning. Anyone else who wishes to  
14 make an appearance?

15 MR. MACK: Good morning, Your Honor. Jeremy Mack  
16 with Ross & Ross, a Landlord creditor.

17 THE COURT: Is Ross & Ross the firm or the creditor?

18 MR. MACK: The creditor.

19 THE COURT: Okay. And your last name again?

20 MR. MACK: Mack. M-A-C-K.

21 THE COURT: Thank you very much.

22 All right. Anyone else?

23 All right. We have a number of matters on the docket this  
24 morning. I've signed those unopposed orders and those agreed  
25 orders and the orders that had certificates of no objection to

1 them after the running of --

2 (WebEx interruption.)

3 THE COURT: -- of negative notice.

4 If you're on WebEx, please mute your line until you wish  
5 to speak on a specific topic, because we're getting a little  
6 feedback into the court.

7 So I was saying I have signed a number of them. At least  
8 a number of the employment orders have fallen off, and maybe a  
9 few other last night.

10 So, with that, Mr. Grossi, I'll turn it over to your team  
11 and you can tell us where we are, maybe give us a roadmap of  
12 today.

13 MR. GROSSI: Thank you, Your Honor. Again, Anthony  
14 Grossi; Sidley Austin; counsel to the Debtors, for the record.

15 We will not bury the lede and appreciate your time and  
16 flexibility, Your Honor, this morning. During the  
17 adjournment, we were able to reach a resolution with the  
18 Unsecured Creditors' Committee with respect to their  
19 objections, and are pleased to announce that we have a  
20 consensual Chapter 11 plan, subject to the objections on  
21 behalf of the U.S. Trustee's Office and the SEC, which we'll  
22 address shortly, plus any other parties in interest who raise  
23 issues today.

24 THE COURT: Sure.

25 MR. GROSSI: Your Honor, these Chapter 11 cases are

1 an unequivocal success. As we stated when we started these  
2 Chapter 11 cases, our goals were to ensure patient continuity,  
3 support our physicians, preserve jobs, and to prosecute a  
4 comprehensive and orderly resolution of these healthcare  
5 businesses. Our proposed plan and our proposed confirmation  
6 order accomplishes each of these objectives.

7 With respect to our core centers, we're moving forward to  
8 close those sales with our stalking horse purchaser. As  
9 you'll recall, Your Honor, the core centers are those physical  
10 units that house physicians and provide direct patient care.  
11 No other bidder emerged for the core center assets, which we  
12 believe is a reflection of the exhaustive prepetition  
13 marketing process.

14 Similarly, while we were open for bids on our MSO business  
15 line, no party came out of the woodwork with respect to those  
16 assets, so we're moving forward to reorganize the Debtor  
17 entities that comprise those businesses. The MSO business  
18 line is the support services for the former Steward physicians  
19 and also a pathway to receive those MSSP payments.

20 As part of our sales process, certain -- two pharmacies  
21 and one optometry clinic were identified as excluded assets.  
22 We were able to react quickly, identify buyers, who happened  
23 to be the resident pharmacist and optometrist at those  
24 respective clinics. We negotiated for consideration and were  
25 able to transfer liabilities associated with those assets to

1 the buyers. Net-net consideration to the estate and avoid  
2 wind-down costs, so overall a success.

3 THE COURT: It looks like it was like three that --

4 MR. GROSSI: Three. Exactly.

5 THE COURT: Okay.

6 MR. GROSSI: So, all in all, we have five separate  
7 sales that are proposed to be approved as part of today's  
8 confirmation order, which is an enormously positive result  
9 that preserves jobs for the overwhelming majority of our  
10 physicians, as well as ensures a virtual uninterrupted  
11 transfer of care for our patients.

12 No party has objected to the approval of the sales. We  
13 have some cure objections, Your Honor, but our anticipation is  
14 that we'll be able to resolve those in the ordinary course.

15 THE COURT: Okay. And most of the cure objections,  
16 from my review of the agenda, were being punted.

17 MR. GROSSI: Exactly. Yes.

18 THE COURT: But I'm sure there's a better word.

19 MR. GROSSI: Yeah. Exactly. Exactly right, Your  
20 Honor.

21 We're in ongoing discussions with those parties, but we're  
22 -- we feel cautiously optimistic we'll be able to get there.

23 The result that we have today was not, by any stretch, a  
24 foregone conclusion when we started this process, which was  
25 well before we entered this courtroom.



1 THE COURT: So it appeared.

2 MS. HAYES: The Debtors, and notably the officers and  
3 the directors, spent countless hours dedicating their time,  
4 including their nights, their weekends, often at great  
5 personal sacrifice. I can attest, Your Honor, many times we  
6 started conversations with an apology as they were stepping  
7 out of birthday parties or dinners or canceling plans to  
8 address issues. We would simply not be here without their  
9 dedication and support, so we thank them for that.

10 We'd also like to thank our disinterested director, Mr.  
11 Ed Borkowski, who is here today, and we suspect after today  
12 will be taking a long vacation from speaking to any lawyers  
13 for a long period of time.

14 As it relates to the resolution with the Committee, I'm  
15 going to read into the record the agreement that we have.

16 The Committee objections to the proposed disclosure  
17 statement, the second amended plan, and the confirmation order  
18 are resolved, including with respect to the Debtor and third-  
19 party releases. The Debtors, the Secured Lenders, and the  
20 Committee have agreed to amend the confirmation order and the  
21 second amended plan to provide that \$2.9 million in the  
22 aggregate to be funded into a segregated account for the  
23 Creditors' Committee's allowed professional fees and  
24 distribution to Class 3 Unsecured Creditors. The Plan  
25 Administrator will monetize any Unencumbered Assets, as

1 defined in the second amended plan, for the benefit of the  
2 Class 3 Unsecured Creditors, using only funds in the general  
3 unsecured segregated account and not the wind-down. The  
4 holders of the first lien debt claims agree to waive any  
5 deficiency claims. The Creditors' Committee can select the  
6 Plan Administrator but must be reasonably acceptable to the  
7 holders of the first lien debt claims. And the Debtors, the  
8 wind-down amount will be capped at \$2 million, with any  
9 unspent wind-down amounts reverted back to holders of first  
10 lien debt claims. No part of the wind-down amount can be  
11 spent monetizing unencumbered assets, and the Plan  
12 Administrator to set up a segregated account for the MSSP  
13 receivables, with the Plan Administrator distributing amounts  
14 received to holders of the first lien debt claims.

15 I'll touch on process in a second with respect to how  
16 we're going to take that record and convert it into a proposed  
17 order for Your Honor. But we do want to thank the Committee  
18 for working with us to get to a resolution. I also want to  
19 thank the Secured Lenders and their advisors for supporting  
20 the business and the process at every step of the way.

21 As it relates to the pending objections by the U.S.  
22 Trustee and the SEC, we've briefed these in our papers, Your  
23 Honor, so won't repeat all of the arguments, but did want to  
24 highlight a few items.

25 The third-party releases are consensual. Sixty-six

1 parties, which is almost twice as many as voted against the  
2 plan, elected to opt out of the third-party releases. Our  
3 process worked.

4 The noticing of these parties is analogous to notices that  
5 are routinely approved by state and federal courts, including  
6 those located in Texas and New York. And this is well  
7 established -- this is a well-established process with well-  
8 established law. We're not breaking any new ground with  
9 respect to our releases.

10 Further, we included a gatekeeper provision in our  
11 proposed confirmation order to ensure that anyone who attempts  
12 to use our third-party release beyond the bounds of its  
13 purpose -- for example, to shield doctors from medical  
14 malpractice claims -- will have to come before this Court and  
15 Your Honor before attempting to do so.

16 As it relates to shareholder suits, predominantly all of  
17 their claims are derivative and are being released as part of  
18 the plan. Further, they all received notice, had an  
19 opportunity to opt out of the releases. Several chose to do  
20 so. The scope of the release is supported by all economic  
21 stakeholders, including the Unsecured Creditors' Committee.

22 Your Honor, we know that the U.S. Trustee would like to  
23 cross-examine certain of our witnesses, so we're not going to  
24 stand on ceremony. We want to be very efficient with the  
25 Court's time.

1 As it relates to process, subject to hearing arguments on  
2 the third-party releases by the U.S. Trustee and the SEC and  
3 any ruling on that point, our plan was to submit a revised  
4 Chapter 11 plan and a confirmation order on certification of  
5 counsel to the Court. We're hoping to submit those documents  
6 no later than the end of the day on Thursday, if not earlier,  
7 subject to the Court's preference. We have our proposed sales  
8 slated to close on Monday, and so we would respectfully ask if  
9 we could have an order entered by the end of the day Friday so  
10 we can close those sales.

11 THE COURT: I'm not on the bench on Friday, but I'll  
12 certainly make time to review them and get signatures to you  
13 on Friday.

14 MR. GROSSI: Thank you, Your Honor. And our goal  
15 would be to try to beat that deadline.

16 THE COURT: Of course, again, so long that they would  
17 be under certification of counsel.

18 MR. GROSSI: Absolutely.

19 Just a couple housekeeping items before I turn it over to  
20 Ms. Kippes. The Debtors filed an amended witness and exhibit  
21 list at Docket 557. We understand no party is contesting any  
22 of these exhibits. We are just asking to move the entire  
23 exhibit list into the record.

24 THE COURT: All right. Do I have your exhibits?

25 MR. GROSSI: I believe so, Your Honor.

1 MS. HOFFMAN: Yes.

2 (Pause.)

3 THE COURT: I'm kidding, Ms. Hoffman. Take your  
4 time. Take your time.

5 MS. HOFFMAN: May I approach, Your Honor?

6 THE COURT: Yes, you may.

7 (Pause.)

8 THE COURT: All right. So, in terms of the record,  
9 are these all found at 557?

10 MR. GROSSI: They are, Your Honor.

11 THE COURT: Okay. All right.

12 Is there any objection to Debtors' 1 through 94?

13 All right. Hearing no objection, Debtors' 1 through 94,  
14 found at Docket 557, are hereby admitted.

15 MR. GROSSI: Okay. Thank you, Your Honor.

16 (Debtors' Exhibits 1 through 94 are admitted.)

17 MR. GROSSI: We'll reserve for closing, but will cede  
18 the podium to Ms. Kippes.

19 THE COURT: All right. Before I hear from Ms.  
20 Kippes, does the Committee have anything further? And then  
21 I'll turn to Ms. Kippes. And obviously by way of opening, but  
22 if anybody wants to just kind of reserve their time for  
23 evidence, that's fine as well.

24 MR. FEINSTEIN: Thank you, Your Honor. Robert  
25 Feinstein; Pachulski Stand Ziehl & Jones; counsel for the

1 Official Creditors' Committee.

2 Your Honor, I can confirm that the Committee is onboard  
3 with the settlement. I think while the parties have disagreed  
4 on many, many things over the past few weeks, we can agree  
5 this was a hard-fought settlement. And we reached it last  
6 night.

7 I want to thank Mr. Roose for reaching out to us at 10:00,  
8 10:30 last night with a new proposal that set us on a course  
9 to settle today. He and Mr. Grossi brought it home with my  
10 partner, Mr. Sandler, who's on the line. Very appreciative of  
11 all their efforts. Very pleased with the outcome. And, as  
12 indicated, we withdraw our objection and support confirmation  
13 of the plan as revised.

14 I'm happy to answer any questions.

15 THE COURT: All right. I don't think I have any at  
16 the moment. I'll probably have some when I kind of sit down  
17 with the order. But I appreciate it. Thank you so much.

18 MR. FEINSTEIN: Thank you, Your Honor.

19 THE COURT: Ms. Kippes?

20 MS. KIPPES: Thank you, Your Honor. Meredyth Kippes  
21 on behalf of the United States Trustee.

22 I don't want to waste the Court's time right now with  
23 making arguments with regard to the releases. I will say that  
24 the exculpation objection has been resolved because they pared  
25 it back to *Highland*.

1 THE COURT: I saw that.

2 MS. KIPPES: And they have included in the I think  
3 most recent version of the proposed order the language we  
4 requested with regard to governmental claims.

5 THE COURT: Okay.

6 MS. KIPPES: So we are down to the third-party  
7 release issue.

8 THE COURT: Okay. Thank you very much, Ms. Kippes.

9 MS. KIPPES: And I will want to --

10 THE COURT: Yes, no, and I'll give you, obviously,  
11 your time --

12 MS. KIPPES: Yes.

13 THE COURT: -- with the witnesses and then time in  
14 closing.

15 MS. KIPPES: Yes.

16 THE COURT: I think it's probably best spent.

17 MS. KIPPES: Yes. I agree. Thank you.

18 THE COURT: All right. Thank you. Appreciate it.

19 All right. Anyone else want to be heard by way of  
20 opening?

21 MS. JOHNSON: Your Honor, I don't want -- you want me  
22 to wait, correct? My name is Jo Ann Johnson.

23 THE COURT: Mr. Grossi, I'd like to hear Ms. Johnson  
24 out. I'll swear her in and then hear her out with respect to  
25 her position today. And I think perhaps at that time, once we

1 hear her issues, query whether the time would be best spent of  
2 having someone from your office get on the horn with Ms.  
3 Johnson and see how we can best address her issues. Because,  
4 candidly, I have a feeling it's not necessarily straight-on  
5 confirmation-related, but I certainly want to give her her  
6 opportunity to speak.

7 MR. GROSSI: Absolutely, Your Honor.

8 THE COURT: Okay. Thank you, Mr. Grossi.

9 So, Ms. Johnson, --

10 MS. JOHNSON: Thank you, Your Honor.

11 THE COURT: -- I'm going to go ahead and I'm going to  
12 swear you in as I would a witness, given that you're not  
13 represented here by counsel today. And then I'll let you give  
14 the Court whatever evidence that you would like to give me.  
15 And then what I'm going to ask is that you reach out to the  
16 Debtors' law firm, and they're going to make someone available  
17 to speak to outside of court to see if maybe some of your  
18 issues can be addressed from a process perspective.

19 So, but first --

20 MS. JOHNSON: Okay.

21 THE COURT: -- let me go ahead and swear you in. If  
22 you could raise your right hand for me.

23 MS. JOHNSON: Yes, I -- yes, I do. And I have it  
24 raised.

25 THE COURT: Appreciate that.



Johnson - Examination by the Court

24

1 JO ANN JOHNSON, SWORN

2 THE COURT: All right. So, please, ma'am.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: And, again, your name for the record is  
5 Jo Ann Rainbow Heart Johnson; is that correct?

6 THE WITNESS: Yes, it is. And it's J-O capital A-N-  
7 N. There's no E on it.

8 THE COURT: Okay. It's a beautiful name.

9 THE WITNESS: Or A.

10 THE COURT: All right. So, --

11 THE WITNESS: Thank you. Thank you so much.  
12 Appreciate, Your Honor.

13 THE COURT: So, what did you want to share with us  
14 today?

15 THE WITNESS: Your Honor, what had happened is I was  
16 illegally Baker Act-ed to Wuesthoff Medical Center, and what  
17 happened is they forced me into an illegal court case. They  
18 said that I was bipolar for speaking too quickly and that I  
19 had inflection in my speech.

20 What happened is, while being Baker Act-ed illegally, I  
21 was given records for a woman named Joanna Johnson, J-O-A-N-N-  
22 A Johnson. I advised them that it was not my name, not my  
23 address, not my date of birth or my doctor. I also, while I  
24 was there, they had numerous patients' records inside of an  
25 activity cart. I walked up and handed them over and told them

1 numerous times, I said, you're in violation of HIPAA laws.  
2 They also had a patient walk in, leave their records on a  
3 table. They also had meal tickets that you could see  
4 anybody's name, you could see your date of birth, everybody's  
5 information was on our names on our tags.

6 I told them -- they gave me -- forced me into a court  
7 case. They tried to tell me again that I was bipolar, when I  
8 have four college degrees, of which one is a paralegal degree.  
9 And they told me -- they tried to prescribe a pill that could  
10 kill me and they wanted to try to force me to take it. I  
11 refused. It had five different times it said it could kill  
12 me.

13 Then I told them that I was a victim of cyberterrorism, of  
14 which I can prove that I hired Rob Moore of Moore Web  
15 Solutions and he came out with a special computer and said  
16 that my cell phone had been hacked, my desktop had been  
17 hacked, and the router to my home had been hacked with a web  
18 system.

19 So they kept me illegally. They were in violation of  
20 extensive laws. One of the women that was there was -- would  
21 go up and down the hall without a top on, rolling around on  
22 the floor. And then the one day I left -- and, really, the  
23 day I was finally being discharged -- she really took poop and  
24 feces and it was all over the hallway.

25 They were really mean to me and abusive to me, and they --

1 they would not release me. That's all they kept saying, is  
2 that I had to speak in a monotone voice and I could not speak  
3 with inflection in my voice. I said to them, I -- Your Honor,  
4 I was injured in an automobile accident when I was eight years  
5 old. So if you hear a sound like, gee, I sound like I'm  
6 speaking quickly or there's like a huff in my sound, it's been  
7 there since I was eight years old. There's nothing I can do  
8 about it. I have a twisted bone.

9 So what I want to share with the Court is I threatened to  
10 sue them. I told them that they were in violation of  
11 extensive HIPAA laws and treating me badly. I'm a disabled  
12 adult, and they treated me badly. They turned around and  
13 changed the name of the hospital. And within one year of me  
14 filing -- oh, and I want to let the Court know, I did file --  
15 I am the person that filed a legal complaint with the State of  
16 Florida for them violating the HIPAA laws and how badly they  
17 were violating them, and that it was shortly after that,  
18 within a year, they changed the name of the hospital from  
19 Wuesthoff Hospital, which it was here -- I've been in Florida  
20 since 1989. It was Wuesthoff Hospital the entire time I've  
21 been here. They changed it from that time to Rockledge  
22 Medical Center, I would say probably because they realized  
23 they were in violation of HIPAA laws, that they could possibly  
24 get sued by myself. And then they turn around, change the  
25 name of the hospital, and decided to sell the hospital.

1 Hopefully, they have corrected some of the HIPAA laws and some  
2 of the things that they have done wrong when they transferred  
3 the sale of the hospital.

4 THE COURT: Okay. Thank you very much, Ms. Johnson.  
5 And given I'm from the deep South, I can actually understand  
6 you just fine. We talk fast, too. So, --

7 THE WITNESS: Thank you so much, Your Honor. I  
8 appreciate it. God bless you. What a -- you're a kind soul.  
9 God bless you. And you're from Texas, so I appreciate that.

10 THE COURT: All right. So, --

11 THE WITNESS: I'm from -- I'm from New York  
12 originally, so I appreciate it. I appreciate that. Thank  
13 you, Your Honor.

14 THE COURT: When people meet me, they ask me if I'm  
15 from the Bronx, which clearly tells me I have a beautiful  
16 accent. But so question for you, Ms. Johnson.

17 THE WITNESS: You do, too. You have a beautiful --

18 THE COURT: Have you received the paperwork from the  
19 Debtors? Have you received the bar date notice and the  
20 different paperwork related to the confirmation today? Did  
21 you receive that in the mail?

22 THE WITNESS: All I have is for today's -- they --  
23 yeah, they sent me the notice of today's hearing and told me  
24 that I could attend, and I went ahead and did that, because on  
25 the form that was online I was not -- I did not have the

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1 documents with me to prove they put me through the court case  
2 and my medical records with me to upload. So I was unable to  
3 upload stuff. But they did send me this, saying that -- that  
4 I could attend the hearing today and speak on my own behalf.  
5 So I -- but I do not have any other documents, Your Honor.

6 THE COURT: Okay. So, again, counsel for CareMax and  
7 each of the other CareMax entities is here in court today.  
8 I'm going to ask that we -- we're going to get your contact  
9 information and we're going to pass that on to the Debtors to  
10 make sure that you're given each of the various documents that  
11 have been sent to claimants in the case, like the bar date  
12 notice and things of that nature, to see if we can --

13 THE WITNESS: Okay.

14 THE COURT: -- address any concerns that you have.  
15 If you have claims in a case, perhaps one of the better ways  
16 to deal with this is to allow you to file a proof of claim in  
17 the bankruptcy. And --

18 THE WITNESS: Okay.

19 THE COURT: All right. Mr. Grossi, anything further  
20 to --

21 MR. GROSSI: I don't have anything further.

22 THE COURT: -- that she should get process?

23 MR. GROSSI: We'll certainly reach out on process. I  
24 would just note that Rockledge is a Steward facility. It's  
25 unrelated to the Debtors. But we can -- we can work with --

1 THE COURT: All right.

2 MR. GROSSI: -- with Ms. Johnson on clearing --

3 THE WITNESS: Yes. Yes. Yeah, I want to -- yes,  
4 that's correct, and it's true.

5 And then I just want to make sure you do have my -- I  
6 currently do not have a cell phone. I'm anti-Internet and --  
7 because Facebook are cyberterrorists, so I don't deal with  
8 that. So I want to make sure that you do have my family's  
9 home phone number so that they can reach out to me.

10 THE COURT: Well, rather than give it to me on this  
11 public platform, here's what I'm going to do. I'm going to  
12 ask that -- you spoke -- did you call my Clerk of Court this  
13 morning?

14 THE CLERK: No, she was on WebEx.

15 THE WITNESS: Yes, I did.

16 THE COURT: She was on the WebEx? Okay. Well, then  
17 what --

18 THE WITNESS: I called in about an hour ago and she  
19 --

20 THE COURT: Okay. Then why don't you give me the  
21 number now? I'll write it down and I'm sure that Debtors'  
22 counsel -- I'm sorry. Just one moment.

23 THE WITNESS: Okay. Thank you, Your Honor.

24 (Court confers with Clerk.)

25 THE COURT: Okay. All right. Just one moment. I've

1 got a number. Or should I --

2 THE WITNESS: Thank you so much, Your Honor. You're  
3 so kind.

4 MR. GROSSI: Do you want me to just give her our  
5 office number, and she --

6 THE COURT: Yes. Here's what I'm going to do, Ms.  
7 Johnson.

8 THE WITNESS: Okay.

9 THE COURT: More logical people than me are thinking  
10 right now. I'm going to --

11 THE WITNESS: Okay.

12 THE COURT: I'm going to give you the office number  
13 for Debtors' counsel to call.

14 THE WITNESS: Okay.

15 THE COURT: Okay?

16 THE WITNESS: Okay. And that's Sidley Austin; is  
17 that correct?

18 THE COURT: Yes. But let me give you -- let me get a  
19 number for you.

20 MR. GROSSI: It's 212 --

21 THE WITNESS: Okay. Thank you.

22 THE COURT: 212.

23 THE WITNESS: Okay.

24 MR. GROSSI: 839.

25 THE COURT: 839.

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1 THE WITNESS: Okay.

2 MR. GROSSI: Let me call up my number, because I  
3 actually don't know it by heart. 5782.

4 THE COURT: 5782.

5 THE WITNESS: Okay.

6 MR. GROSSI: Thank you, Your Honor.

7 THE COURT: All right.

8 THE WITNESS: Okay.

9 THE COURT: And you'll get New Yorkers.

10 THE WITNESS: All right.

11 THE COURT: They'll understand you.

12 THE WITNESS: Okay. Thank you so much, Your Honor.  
13 I greatly appreciate your time and your kindness. And thank  
14 you for telling me that you also speak quickly, and I think  
15 you speak just fine as well. But you do speak quickly and I  
16 understand everything you're saying. So you're very kind,  
17 Your Honor. I appreciate it.

18 THE COURT: Have a great day, Ms. Johnson. God  
19 bless.

20 THE WITNESS: Thank you. You as well. Thank you.  
21 God bless you. Thank you, too. Bye-bye.

22 THE COURT: Bye-bye.

23 All right. Thank you all for your patience.

24 MS. WISE: Good morning, Your Honor.

25 THE COURT: Good morning, Ms. Wise.



1 MS. WISE: This is Jolene -- hi. It's a pleasure to  
2 be in your courtroom today.

3 I just wanted to take a moment at this time to thank  
4 Debtors' counsel for working with us in resolving three of our  
5 five concerns. They added the governmental carve-out and  
6 included the SEC; the amendment to the exculpation provision,  
7 adding the carve-out for actual fraud, willful misconduct, and  
8 gross negligence; and then revising the definition of the  
9 exculpated party to comply with *Highland*.

10 And then our remaining issues, as noted previously, is  
11 that this -- the SEC's position that the release is  
12 nonconsensual as it applies to public shareholders. As you  
13 may know, we prefer the opt-in versus the opt-out. And then  
14 that the third-party release does not carve out actual fraud,  
15 gross negligence, or willful misconduct.

16 And I can answer questions and provide my argument at the  
17 appropriate time.

18 THE COURT: All right. Thank you very much, Ms.  
19 Wise. I think that what I'll do is I'll obviously allow you  
20 any time that you want with the evidence, and then I'll hear  
21 from both you and Ms. Kippes in closing with respect to  
22 releases or any other objection that you might have. So thank  
23 you very much.

24 MS. WISE: Thank you.

25 THE COURT: Thank you.

1 All right. Anyone else want to be heard by way of  
2 opening?

3 Let me start like this, so, again, if there's any issues.  
4 Is there anyone here on an objection that's either not listed  
5 on the agenda or hasn't been resolved, other than the bigger-  
6 ticket items with respect to third-party releases? Is there  
7 any objector that -- I know a number of them are going to be  
8 pushed in terms of cure objections and the like and will be  
9 resolved or heard at a later time. Anyone else want to be  
10 heard?

11 MS. LAPENTA: Your Honor, if I may?

12 THE COURT: Ms. Lapenta?

13 MS. LAPENTA: This is Nicole Lapenta with Shipman and  
14 Goodwin. I'm here with local counsel, Rachael Smiley, from  
15 Ferguson Braswell.

16 We have a pending limited objection to the sale and bid  
17 procedures motion that is, you know, in the process of being  
18 resolved, and I just wanted to make a brief statement on the  
19 record to update the Court on where we stand with that. But  
20 (audio gap) not, we can wait until after other people are  
21 heard, or whatever works best.

22 THE COURT: Okay. Does it make sense to have any  
23 limited objections resolved at the end, or would you like to  
24 hear from Ms. Lapenta now?

25 MR. GROSSI: She can make her statement. Yeah, she

1 can make her statement now if she'd like.

2 THE COURT: Okay. Please proceed, Ms. Lapenta.

3 MS. LAPENTA: Thank you. Shipman & Goodwin  
4 represents Preferred Care Network, Inc., Preferred Care  
5 Partners, Inc., UnitedHealthcare Insurance Company, and United  
6 of Florida, Inc. So I'm just going to refer to them  
7 collectively as United.

8 And they filed a limited objection to the bid procedures  
9 motion. That objection is at Docket No. 175. We did not  
10 object to the sale itself. This would be the core centers  
11 sale of assets to ClareMedica. But we -- our objection  
12 concerned state and federal regulations that require United to  
13 give advance notice to members if their providers will be  
14 going out of network, to prevent any disruption to patient  
15 care.

16 At the time the bid procedures were entered, we did have a  
17 statement included in that order that said that the order  
18 would enter without prejudice to Preferred Care and to United  
19 so that the parties could continue with its discussions to  
20 resolve this issue. And we have had several discussions since  
21 then, and continue to be in touch with both Debtors' counsel  
22 and counsel for ClareMedica and continue to work through those  
23 issues in good faith.

24 We also have a pending cure objection at Docket No. 380  
25 which has been adjourned. But ultimately, if United's

1 contracts are not assumed by the Debtors and are not assigned  
2 to ClareMedica, then we've tentatively discussed a  
3 transitional plan that would allow United adequate time to  
4 meet these notice obligations to advise members that providers  
5 will be going out of network. And we expect to be able to  
6 resolve these issues whichever way it goes, whether the  
7 contracts are assumed or not. But in the event that, you  
8 know, that does not happen, we will certainly come back to the  
9 Court for further assistance.

10 But that's the extent of what we wanted to state for  
11 today. It's nothing adversarial, really, just more of an  
12 update and to make a record.

13 THE COURT: All right. Thank you very much, Ms.  
14 Lapenta.

15 And, obviously, a number of cure objections and the like  
16 will be passed beyond any confirmation. So we'll make time to  
17 address those, whether on the next omnibus day or however the  
18 Debtors' process works itself out.

19 MR. FOX: Your Honor, Shawn Fox from McGuireWoods.

20 THE COURT: Yes.

21 MR. FOX: I represent ClareMedica Viking. And I  
22 agree with what Ms. Lapenta put on the record. We are talking  
23 to them. We are working through those issues.

24 THE COURT: Excellent. Good to hear.

25 MR. FOX: Thank you.

1 THE COURT: Thank you.

2 All right. With that, does it make sense to put on the  
3 evidence? All right.

4 And from the Debtors' perspective, Mr. Grossi, is  
5 everything going to be based upon the declarations that were  
6 -- they were all moved in as part of your 1 through 94, I  
7 assume?

8 MR. GROSSI: That's right, Your Honor.

9 THE COURT: Okay.

10 MR. GROSSI: Thank you.

11 THE COURT: Thank you very much. And I did have an  
12 opportunity to review those prior to the hearing today.

13 Ms. Kippes? The tie is fantastic.

14 MS. KIPPES: Thank you. All right. Your Honor, I  
15 feel like every time I have a lot of questions to ask I'm also  
16 losing my voice. So I apologize if I croak.

17 THE COURT: Well, I gave you those mints last time.

18 MS. KIPPES: Yes. I actually have a handful of  
19 Ricola. And water. So we'll see how we go.

20 Okay, Your Honor. The first person I'd like to call is  
21 Mr. Brian Karpuk, Karpuk, from Stretto.

22 THE COURT: All right. All right, sir. And I have  
23 read your declaration, but I do not recall if you're an  
24 attorney.

25 MR. KARPUK: I am not.

Karpuk - Direct

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1 THE COURT: You are not? Okay. Let me go ahead and  
2 swear you in, then.

3 BRIAN KARPUK, U.S. TRUSTEE'S WITNESS, SWORN

4 THE COURT: Please proceed. Thank you.

5 DIRECT EXAMINATION

6 BY MS. KIPPES:

7 Q Mr. Karpuk, there on the stand in front of you -- I should  
8 have introduced myself. I'm so sorry. Meredyth Kippes. I'm  
9 a trial attorney with the Office of the United States Trustee.  
10 And I have some questions to ask you about the solicitation  
11 and your declaration.

12 In front of you are Exhibits D-56 through D-60, which are  
13 your declaration and then the exhibits that were attached to  
14 it. It was all filed as one document with the Court, but  
15 they're separate exhibits here. Do you see those?

16 A I do.

17 Q Okay. Great. Okay. All right. My first question is how  
18 many people were solicited in Class 3?

19 A I don't have that information in front of me here. They  
20 would be located within the certificate of service referenced  
21 in what I believe is Paragraph 8.

22 Q Okay. I'll move on. Let's look at I believe it's D-57,  
23 which is the -- I believe it's Exhibit A to your declaration.  
24 And it's basically the results of the tabulation summary. Do  
25 you have that?

1 A I do.

2 Q Okay. So, how many people voted in favor of the plan?

3 A Thirty-seven parties in Class 2 and seventeen parties in  
4 Class 3.

5 Q Okay. And then right there beneath the 17 there's 39  
6 rejected?

7 A That is correct.

8 Q Okay. Down below is a list of various Debtors and the  
9 tallies with regard to each. I'll represent to you that  
10 there's a lot of Debtors with the number 7 next to them. Who  
11 are those seven entities? What is -- is it -- or is it all  
12 the same?

13 A In general, it is -- yes. Where you see 7, that is  
14 generally all the same party. One of -- there were seven  
15 secured lenders that also voted in Class 3, and this was  
16 prepared as those parties were -- that -- those votes were  
17 allocated across all but I believe seven Debtors, whichever  
18 ones have the zero votes in favor, --

19 Q Okay.

20 A -- it looks.

21 Q And the reason they were not allocated to those seven  
22 Debtors is those Debtors are not obligors on the first lien  
23 debt?

24 A That is my understanding.

25 Q Okay. Okay. Let's look at the exhibit that would be

1 Exhibit D-58, which is the Detailed Voting Report of All  
2 Submitted Ballots.

3 A Is that Exhibit B to my declaration?

4 Q Exhibit B to your declaration.

5 A Okay.

6 Q Okay. So, do you know who the -- well, I don't see, for  
7 instance, if you go back to Exhibit D-56, or 57, I don't see  
8 Debtor Analitico, for instance, listed here on this exhibit.  
9 Can you explain why, even though individual Debtors are listed  
10 on Exhibit D-57, why they're -- why they're not here on this  
11 D-58?

12 A There was only one ballot sent out to each party in Class  
13 3. And I guess, presentation-wise, it's listed under CareMax,  
14 Inc., is how it would be listed on the consolidated basis.  
15 And then for presentation of the unconsolidated, it was  
16 allocated across, as indicated, the Debtors that had -- that  
17 were obligated.

18 Q Okay. So if somebody voted for or against the CareMax,  
19 Inc. entity with regard to their claim, the CareMax, Inc.  
20 entity, you applied that to all of the other entities. Is  
21 that correct?

22 A Only for the -- the class. The -- the lenders that were  
23 provided with deficiency ballots in Class 3, if they voted,  
24 because there was no, you know, Debtor listed on the ballot  
25 itself. But based upon discussions with Debtors' counsel, we



1 were asked to present the unconsolidated basis to allocate  
2 those lender votes across the -- the entities.

3 Q Okay. So it's just lender votes there were allocated to  
4 each of the not-CareMax Debtors with regard to the  
5 lienholders?

6 A That's correct. It's just --

7 Q Okay. Okay. So, I'm on the detailed vote tabulation,  
8 which is the --

9 MS. KIPPES: I apologize, Your Honor. Detailed  
10 Voting Report of All Submitted Ballots. That's D-58.

11 THE COURT: Okay.

12 BY MS. KIPPES:

13 Q So, I'm on Page --

14 THE COURT: This is the one that starts with Class 3  
15 12/26 at the top?

16 MS. KIPPES: Yes.

17 THE COURT: Okay. Thank you. I'm following.

18 BY MS. KIPPES:

19 Q So, when -- when did you solicit the claims of the  
20 lenders? The unsecured claims of the lenders?

21 A The unsecured claims of the lenders were solicited after  
22 the auction. I believe the certificate of service referenced  
23 in Paragraph 8, at Docket 441, would indicate the exact date  
24 that that went out.

25 Q Was it before January 24, 2025?

Karpuk - Direct

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1 A I believe it was, yes.

2 Q Okay.

3 THE COURT: For your reference, Ms. Kippes, I think  
4 that that is going to be Debtors' 94, once you get to --

5 MS. KIPPES: Debtors' 94? Okay.

6 THE COURT: -- you get there.

7 MS. KIPPES: Let me go grab that, Your Honor.

8 THE COURT: Take your time.

9 (Pause.)

10 THE COURT: Ms. Kippes, will the witness need a copy?  
11 See if Mr. Grossi can get a copy of the Debtors' exhibits for  
12 him.

13 MS. KIPPES: Okay.

14 THE COURT: Okay.

15 (Pause.)

16 THE COURT: It's going to be the last notebook.  
17 Thank you, Ms. Hoffman.

18 BY MS. KIPPES:

19 Q Okay. Mr. Karpuk -- am I saying your name correctly?

20 A It's Karpuk, yes.

21 Q Karpuk? Okay.

22 A Yes.

23 Q If you'll look at Page 12 of 61 at the top, there's -- it  
24 says, Main Document, Page x of 61. If you go to Page 12 of  
25 61. About halfway down, it refers to service of the

1 solicitation package to the parties on Exhibit M on January  
2 21st.

3 A That -- that is correct. That is the correct exhibit.

4 Q Okay. And so Exhibit M is the -- is the service to the  
5 lenders of ballot -- the Class 3?

6 A That is correct. The Class 2 and Class 3 on that date.

7 Q The Class 2 and Class 3?

8 A Yes.

9 Q So they were not served --

10 A They -- they were served revised Class 2 ballots --

11 Q Revised?

12 A -- as well as Class 3.

13 Q Okay. How were -- do you know how the Class 2 ballots  
14 were revised?

15 A As I believe is set forth in my declaration -- (pause).

16 The Footnote 4 of my original declaration, they were  
17 originally allocated in Class 2 based -- by the Admin Agent,  
18 and following cancellation of the auction and selection of the  
19 winning bid, holders of first lien debt claims were also  
20 solicited in Class 3 for deficiency claims.

21 Q Okay. So -- (pause). Okay. I've lost your declaration.  
22 I'm sorry. So it wasn't until January 21st that the  
23 deficiency claim was solicited?

24 A That is correct.

25 Q Okay. And you changed the -- initially, the -- initially,

1 was the whole claim, deficiency claim and prepetition claim,  
2 solicited -- or, and secured claim, was that all solicited in  
3 Class 2?

4 A My understanding is that the entire -- each -- each  
5 individual lender's claim was included in Class 2 in the  
6 December solicitation.

7 Q Okay. And then last week the Debtors decided to bifurcate  
8 that?

9 A That is correct.

10 Q Okay. Okay. All right. Let's go back to D-68, which is  
11 the detailed voting report. So --

12 THE COURT: Did you say 68, Ms. Kippes?

13 MS. KIPPES: I think it's D-68. The detailed voting  
14 report.

15 THE COURT: Is there some other -- my 68 is a notice  
16 of nonvoting status.

17 MS. KIPPES: Hmm.

18 THE COURT: Are you looking ECF number, by chance?

19 MS. KIPPES: No, Your Honor, I'm looking at the  
20 witness and exhibit list at Docket Entry 557. And it's --  
21 it's -- they were pulled from the exhibit binders given to me  
22 today.

23 THE COURT: Okay. Just give me one moment, then.  
24 Let me catch up. Maybe I'm --

25 MS. KIPPES: I'm sorry. Did I say 68?

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1 THE COURT: I thought so.

2 MS. KIPPES: Okay. 58.

3 THE COURT: Okay.

4 MS. KIPPES: I'm not making it, Your Honor.

5 THE COURT: Got it. Ready when you are.

6 BY MS. KIPPES:

7 Q Okay. On Page 4 of that document, there are some  
8 confidential creditors listed for Class 3.

9 A Yes. I see that.

10 Q Okay. Without revealing their identities, what type of  
11 creditor were these?

12 A I -- I don't have -- I don't have that answer in front of  
13 me.

14 Q Were these patients?

15 A My understanding is that they would be patients, yes, that  
16 there were patients that were scheduled in the Debtors'  
17 schedules.

18 Q Okay.

19 A And/or they may have filed a claim as well.

20 Q Okay. How many patients filed proofs of claim?

21 A I don't have that information in front of me.

22 Q Was it -- was it more than 10?

23 A It could be right around that number.

24 Q Okay.

25 A It was not, you know, dozens.

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1 Q Okay. Okay. How many combined patient notices went out?

2 A That's going to be in Docket 389, which I don't know what  
3 exhibit that will be.

4 THE COURT: 91.

5 THE WITNESS: 91?

6 THE COURT: Exhibit 91.

7 BY MS. KIPPES:

8 Q Okay.

9 A So, on Page 6 of that document, --

10 Q Okay.

11 A -- I believe it's Paragraph -- the second paragraph down.  
12 On December 23rd, 437,321 confidential patients were served by  
13 first class mail and 54,096 by electronic mail.

14 Q Okay. Do you know if the 54,000 overlapped any with the  
15 437,000?

16 A Yes, I believe that they were served by both means.

17 Q Okay. Do you know how many patients voted either for or  
18 against the plan?

19 A It would be listed in the ballot details as either a  
20 confidential creditor -- which I see five. And then I believe  
21 there's two more on Page 8 of 10 for Schedule F Litigant 06.

22 Q Okay. Is Schedule F Litigant 06 the same person or a  
23 different person?

24 A It is the -- I believe it's the same -- I believe it's the  
25 same person against two different Debtors.

1 Q Okay. Back on Page -- would be 4 of 10, the confidential  
2 creditors that are listed there, --

3 A Yes.

4 Q -- is it the same person or a different person?

5 A (Pause.)

6 Q And if you don't --

7 A Those look -- they look like different.

8 Q Okay.

9 A I would think different.

10 Q So, at most, six patients voted in connection with the  
11 plan. Is that a fair assessment?

12 A Yes, that's a fair assessment.

13 Q Okay. Let's look at what would be Exhibit D-60, which is  
14 the release report.

15 A I have it.

16 Q Okay. And what does this report show?

17 A This is a report of all parties who -- who opted out of  
18 the releases on their ballot via a nonvote notice, or there  
19 was also a couple parties from Humana that we were asked to  
20 add to the -- as opting out via email.

21 Q Okay. And you heard Mr. Grossi say that there were 66  
22 opt-outs. Do you agree with that?

23 A That sounds correct.

24 Q Okay. At the very top there, there's two opt-outs by 1675  
25 JB Associates, LLC. Do you see that?

1 A I do.

2 Q Are you counting both of those opt-outs as separate opt-  
3 outs?

4 A I believe that the total, the 66 total number includes,  
5 yes, all ballots or nonvote notices received, without any sort  
6 of de-duping.

7 Q Okay. So it's not necessarily 66 creditors that opted  
8 out? There are 66 opt-outs, but you received some of them  
9 from -- some of them basically duplicates, by the same --

10 A It was 66 forms, I guess, is --

11 Q Sixty-six forms? So, Apex Place, PC, LLC, that's just one  
12 entity?

13 A Yeah, I guess.

14 Q Okay. Atlantic Specialty Insurance Company, there's one,  
15 two, three, four, five there. That's just one entity?

16 A That looks to be correct.

17 Q Okay. All right. We've got one, two, three, four, five  
18 confidential creditors. Are these the same person or a  
19 different person?

20 A The ballot number would indicate --

21 Q At the top of the page, it's -- it says, Page 3 of 7. And  
22 then at the top of the chart it's 1/23/25. Ballot --

23 THE COURT: I think he wants to cross-reference the  
24 ballot number --

25 THE WITNESS: Yeah. So, --



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1 MS. KIPPES: Okay.

2 THE COURT: -- to the other report.

3 THE WITNESS: In general, --

4 MS. KIPPES: Okay.

5 THE WITNESS: -- these are, yes, the same parties.

6 BY MS. KIPPES:

7 Q The same parties from the --

8 A The con... yes, the con...

9 Q -- the detailed ballot?

10 A From the ballot received, yes. Those are --

11 Q Okay.

12 A -- received on ballots, I guess.

13 Q Okay. So they're separate people here?

14 A Yes.

15 Q Okay. The FVP entities, do you know if they're all  
16 related?

17 A I do not know how they're related.

18 Q Okay. Okay. And then you have at the top, it's Page 4 of  
19 7, you've got one, two, three, four, five, six, seven, eight,  
20 nine, ten Humana entities.

21 A I see them.

22 Q Okay. These are all basically the same creditor, correct?

23 A Yes. I mean, the ones that are listed there are exactly  
24 the same.

25 Q Okay. And the next page, it's got one more Humana, for

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1 11.

2 And on the next page, there's Preferred Care Network, Inc.  
3 there twice. That's the same entity?

4 A It looks to be.

5 Q Okay. And the next page, there's Schedule F Litigant 06.  
6 I believe you said this --

7 A I believe that's the same person, yes.

8 Q Same person? Just one person?

9 A Yes.

10 Q Okay. And at the bottom we've got one, two, three, four,  
11 five UnitedHealthcare entities, and one more on the back, for  
12 six. Is that -- that's the same creditor?

13 A Okay. Looks to, yes.

14 Q Okay. So 66 forms, but far fewer creditors?

15 A Correct.

16 Q Correct? Okay. Did you receive any requests for ballots  
17 or opt-out forms due to the publication notice?

18 A I'm not aware of any.

19 Q Okay. Excuse me, I'm just going to --

20 (Pause.)

21 MS. KIPPES: Your Honor, I believe I'm done with Mr.  
22 Karpuk.

23 THE COURT: All right. Thank you very much, Ms.  
24 Kippes.

25 Is there anyone else who wishes to cross-examine Mr.

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1 Karpuk?

2 MR. MUENZ: Hello, Your Honor.

3 THE COURT: Hi.

4 MR. MUENZ: Jon Muenz for the Debtors. We don't have  
5 any questions.

6 THE COURT: All right. Thank you very much.

7 All right. Ms. Wise, any further examination for Mr.  
8 Karpuk? Or anyone else?

9 All right. Hearing no takers, --

10 MS. WISE: Yes, Your Honor. If I may ask --

11 THE COURT: Please go ahead, Ms. Wise. I apologize.

12 MS. WISE: Sorry.

13 CROSS-EXAMINATION

14 BY MS. WISE:

15 Q In looking at the release details that we were just  
16 looking at with the U.S. Trustee, were any of the opt-out  
17 forms returned by shareholders?

18 A I am -- I'm unsure of that. There are five -- the FVP  
19 entities that were listed on I guess Page 3 of 7, I believe  
20 those were the only forms that came in on the nonvote notice,  
21 and they came in through our website. But I don't -- I'm not  
22 sure who they are.

23 Q Okay. It looks like they're also identified with a ballot  
24 number. So would they be -- they're not -- they're creditors  
25 as well? Or not sure?

1 A Our ballot numbering system is any form that gets  
2 processed, so it is sequential. Whether it be a ballot or a  
3 nonvote notice is sequentially numbered. So it's not an  
4 indication of a ballot.

5 Q Okay. And those that don't have a ballot number -- I  
6 think there are five entities -- what would they be classified  
7 as? A creditor? A shareholder? Or something other?

8 A We were asked by Debtors' counsel to add -- add those  
9 parties to the release opt-out report. I believe they were --  
10 came in by email.

11 Q Okay. Do you know how many nonvote status notices were  
12 sent out to shareholders?

13 A I believe that's going to be in Exhibit 91. (Pause.) So,  
14 because there's, you know, public securities here, they were  
15 served via, you know, nominees in Mediant and Broadridge. So  
16 I see on -- I think this would be Exhibit C. Or no, it's at  
17 Page 3 of 114. 1,750 sets of the nonvoting status or  
18 interests were sent -- sent to Broadridge. And five copies  
19 were sent to Mediant. I believe that's the public equity  
20 service.

21 Q Okay. And do you know what steps were taken by those  
22 recipients to make sure that the notices were sent on to the  
23 actual holders?

24 A I do not.

25 Q And, again, looking at the Exhibit D of your declaration,

1 the five SEP medical offices and -- and all that are listed as  
2 SEP, they may or may not be shareholders?

3 A That's correct. I -- I'm -- I'm -- those were the five  
4 that I know came in on nonvote notices. And those were the  
5 only five nonvote notices that were received.

6 Q Okay. So they could be unimpaired, having assumed, and  
7 not voting?

8 A That is correct.

9 Q And, again, staying with that same document, your Exhibit  
10 D to your declaration, it doesn't appear that any shareholders  
11 returned an opt-out form.

12 A I -- I believe that's correct. I mean, that -- those were  
13 the only five non -- nonvote notices returned.

14 Q Nonvote notices?

15 MS. WISE: All right. Thank you very much.

16 THE COURT: Thank you, Ms. Wise. Any other questions  
17 of the witness?

18 (No response.)

19 EXAMINATION BY THE COURT

20 THE COURT: Mr. Karpuk, can you just tell the Court  
21 who Broadridge and Mediant are?

22 THE WITNESS: Broadridge and Mediant, they are --  
23 they handle service of public securities services in -- you  
24 know, basically for proxy statements, annual statements. And  
25 they are also utilized in the solicitation of equity and

1 public bondholders, you know, in bankruptcy cases.

2 THE COURT: All right. And so did Stretto retain  
3 them as a third-party vendor to effect the service of the  
4 shareholders?

5 THE WITNESS: We don't retain them. We just utilize  
6 them. Because in order to reach public equity, we don't  
7 generally know who the public holders are. Right? So we will  
8 ask -- we will ask the nominees to set a record date, and they  
9 will identify -- it's the nominees of the equity. They always  
10 utilize Broadridge or Mediant to notify their clients. And so  
11 that's -- all kind of public equity or public bond noticing  
12 will generally go through those two entities.

13 THE COURT: And did you or someone under your  
14 supervision interface with Broadridge and Mediant to assure  
15 that the service had been effected?

16 THE WITNESS: Stretto has a dedicated public  
17 securities team, and so I was -- I personally did not  
18 interface with them, --

19 THE COURT: Okay.

20 THE WITNESS: -- but I know that we do do that, and,  
21 you know, we ship -- they -- we work with them to identify how  
22 many packages they need, and then we bulk ship those packages  
23 to them. They place the labels on them and/or notify them.

24 THE COURT: All right. Thank you for your testimony.

25 Again, anyone else have any final questions for Mr.

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1 Karpuk?

2 You may step down. Thank you very much, sir, for your  
3 testimony.

4 THE WITNESS: Thank you.

5 (The witness steps down.)

6 THE COURT: Ms. Kippes?

7 MS. KIPPES: Thank you, Your Honor. Excuse me.

8 THE COURT: Take your time.

9 MS. KIPPES: Your Honor, next I'd like to call the  
10 Debtors' CRO, Paul Rundell.

11 THE COURT: All right.

12 Good morning, sir. Could you raise your right hand for  
13 me?

14 PAUL RUNDELL, U.S. TRUSTEE'S WITNESS, SWORN

15 THE COURT: Thank you very much.

16 Please proceed, Ms. Kippes.

17 MS. KIPPES: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. KIPPES:

20 Q Good morning, Mr. Rundell. We've talked via video, but I  
21 don't think we've ever been --

22 A Good morning.

23 Q -- live and in person before. Do you have the exhibits  
24 from Mr. Karpuk in front of you? Do you have his --

25 A I have exhibits. I don't -- I don't know which one you're

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1 referring to.

2 Q Okay.

3 MS. KIPPES: Your Honor, may I approach?

4 THE COURT: Very big binders. Yes.

5 MS. KIPPES: Thank you.

6 BY MS. KIPPES:

7 Q So, Mr. Rundell, I'm looking actually at Exhibit D-60,  
8 which is the opt-out.

9 A I don't have that. I have D-1. I'm sorry. Is there --

10 MS. KIPPES: Your Honor, may I approach, please?

11 THE COURT: Yes.

12 BY MS. KIPPES:

13 Q Okay. We have D-60 in front of you now, the release  
14 report?

15 A I do.

16 Q Okay. On the second page of the chart, it has some FVP  
17 entities listed. A few of them are FVP RE. Are these -- does  
18 that stand for real estate? Do you know what these entities  
19 are?

20 A And I apologize. So, my -- I show Page 6 of 7, and then  
21 it goes 4 of 7 and 2 of 7. Like I -- I need a little bit of  
22 help what you're looking at.

23 Q Okay.

24 THE COURT: I think she's on Page 3 of 7.

25 THE WITNESS: 3 of 7?



1 THE COURT: Yes.

2 BY MS. KIPPES:

3 Q Do you see the FVP entities?

4 A F as in Frank, V as in Victor, P as in Peter?

5 Q Yes.

6 A Yes.

7 Q Are these landlords?

8 A Yes, I believe FV -- FVP is a landlord.

9 Q Okay. Are they related?

10 A I'm not sure. Sometimes landlords have different  
11 ownerships, so I don't know for sure if -- what the ownership  
12 of the landlord is for each location.

13 Q Okay. Are these leases being assumed?

14 A I have to look. I believe some of them might be, but some  
15 of them are not.

16 Q Okay. Okay. Okay. I'm going to -- I'm going to ask you  
17 some questions about the releases. There's some language in  
18 the plan that says if you vote in favor of the plan then you  
19 -- you are granting a release. But then toward the end it  
20 says, if you opt out, you are not granting for the release.  
21 But do people who vote in favor of the plan and opt out, are  
22 they opting out or are they held to the vote in favor of the  
23 plan?

24 A I think you're going to have to ask my counsel. That's --  
25 that's a legal question.

1 Q Okay. So you don't know if -- if somebody votes in favor  
2 of the plan and -- I mean, it's -- the reason --

3 MS. KIPPES: For the Court's benefit, the reason I'm  
4 asking is we want to clarify because it -- the language  
5 appears to conflict. But we'll address that with counsel.

6 BY MS. KIPPES:

7 Q Okay. So, what claims do the Debtors/Released Parties  
8 actually want released? What kind of claims?

9 A I mean, I think it depends. In healthcare cases, there's  
10 -- there's -- and I assume we're talking about the third  
11 party. I should ask that question.

12 Q Yes.

13 A Okay.

14 Q When I ask about releases, I am asking only about the  
15 third-party releases.

16 A So, in this case, we have -- we have buyers. I think  
17 we've mentioned there's five of them. Those buyers negotiated  
18 in good faith. We have different professional firms. There  
19 -- there's a lot of parties that got us to this point, and  
20 part of the negotiation with both -- with all the parties was  
21 to be included. That was consideration.

22 So when I look at, without the releases, what could  
23 happen, I've got 250,000 patients. I have a thousand  
24 employees. All that could be impacted. That's what I --  
25 that's what I think. When you ask about what could happen,

1 that -- damages to all those parties could happen.

2 Q So the Debtor wants these third-party releases to be held  
3 against -- enforced against the patients. Is that correct?

4 A No.

5 Q No? The third-party release will not be enforced against  
6 any patients?

7 A I'm not sure I understand the question.

8 Q Okay. There are patients. There are, according to your  
9 first day declaration, approximately 260,000 patients a year.  
10 Is the Debtor going to enforce the third-party release against  
11 patients?

12 MR. MUENZ: Your Honor, I object to the extent these  
13 questions call for a legal conclusion.

14 THE COURT: Okay. Make sure you get near a mic for  
15 your objections. But Mr. Muenz has objected that it calls for  
16 a legal conclusion, Ms. Kippes.

17 MS. KIPPES: Okay.

18 BY MS. KIPPES:

19 Q What is your understanding?

20 THE COURT: I'll allow the rephrased question.  
21 Please proceed.

22 THE WITNESS: Yeah. Regarding, you know, those  
23 claims, I do -- I do think it goes into more of a legal  
24 argument than what my background is, unfortunately.

25 BY MS. KIPPES:

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1 Q Do the doctors who work at the clinics get the benefit of  
2 the third-party release?

3 A The same answer.

4 Q Okay. Are medical malpractice claims included in the  
5 third-party release?

6 A It'd be the same answer.

7 Q Okay. Were medical malpractice claims considered in your  
8 negotiations with regard to the third-party release?

9 A I think it's a, again, it's a legal conclusion, but I do  
10 think -- I don't think that was intended.

11 Q You don't think medical malpractice claims were intended  
12 --

13 A Yeah, but I think it -- I would have to look at the -- I  
14 think counsel would have to answer that question.

15 Q Okay. So let's go down the list of released parties.  
16 What claims against the Debtor do you think should be  
17 released?

18 A I think I answered that question. I'm sorry.

19 Q Oh. You -- so, basically, any and all claims?

20 A Yes.

21 Q Okay.

22 MR. CALIFANO: Objection. Your Honor, there's  
23 provisions. There's release provisions in the plan. And if  
24 we want to talk about it, she should direct the witness to the  
25 provisions. And since it's legal language, I mean, we should

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1 talk about what's in the plan as opposed to asking this  
2 witness, who operates the Debtor, as to what his understanding  
3 is on these releases. He also said he didn't negotiate them.  
4 But the releases are set forth in the plan. It's not  
5 something that, you know, he has to interpret. The language  
6 is clear.

7 THE COURT: Ms. Kippes?

8 MS. KIPPES: Your Honor, if we're going to release  
9 any and all claims, the guy who runs the company ought to know  
10 what claims he's asking to be released.

11 MR. CALIFANO: Not necessarily, Your Honor. I mean,  
12 these are -- this -- there is a definition of what's claim --  
13 of what's a Claim. There's the definition of who are the  
14 Released Parties. And I wouldn't say that somebody who  
15 operates it would necessarily know what they are. And it's  
16 also claims that are known and unknown. I mean, we -- this is  
17 not novel. Okay. The language in the release is broad  
18 release language that's been used in other cases, and he's not  
19 going to know what claims are released. And it's just --  
20 we're creating a mess of a record here.

21 THE COURT: Ms. Kippes?

22 MS. KIPPES: Okay. Okay. I have one more question  
23 sort of in that line, Your Honor.

24 THE COURT: Okay.

25 MS. KIPPES: And Mr. Califano can object to it if he

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1 wants.

2 BY MS. KIPPES:

3 Q Do you know whether personal injury claims are being  
4 released?

5 A I'd have to reference the claim.

6 Q Okay. Okay. There's a definition of Related Party. And  
7 can you name, can you identify by name one related party?

8 MR. CALIFANO: Objection, Your Honor. It's the same  
9 -- it's the same objection.

10 MS. KIPPES: Okay.

11 BY MS. KIPPES:

12 Q Where does the universe of Related Parties stop?

13 MR. CALIFANO: Objection.

14 THE COURT: Ms. Kippes, I certainly understand the  
15 UST's position on this one. I guess the question is, we can  
16 either put the definitions and the language in front of him,  
17 or, if he's going to rely upon counsel, then it'll be more of  
18 a legal argument.

19 I think it's certainly fodder for this witness to ask  
20 what, if any, part of the negotiations took place, what was  
21 said about releases, if they relied upon them. But I think  
22 that we've covered that, from a legal perspective, he's not  
23 going to give us a great deal with respect to the language  
24 itself, which I bet was drafted by counsel.

25 MS. KIPPES: Yes, Your Honor. Well, the Court

1 anticipated my next line of questions, so I'll move on.

2 THE COURT: Okay.

3 MS. KIPPES: Okay.

4 BY MS. KIPPES:

5 Q With whom were the third-party releases negotiated?

6 A I'm not sure I understand the question.

7 Q Earlier, you said that the third-party releases were  
8 negotiated. Who were negotiating the third-party releases?

9 A The Debtor and the various third parties.

10 Q Which third parties?

11 A There's -- there's different parties here that are in the  
12 room today. So, some of those parties happen to be the  
13 Committee and other parties that would have standing in the  
14 case.

15 Q Okay. But, well, I don't think the Committee negotiated  
16 the releases because the Committee was not formed when the  
17 releases were created. You would agree with me with that,  
18 right?

19 A In the original plan, but they certainly had been formed  
20 once the plan was on file.

21 Q The plan was filed on the petition date.

22 A Correct.

23 Q And the releases have not changed since the plan was  
24 filed. So you're saying that the Official Committee of  
25 Unsecured Creditors negotiated the terms of the third-party

1 release even though it hasn't changed?

2 A Well, they've certainly talked about it since they've been  
3 formed.

4 Q Okay. Who else?

5 A I don't recall all the parties. But the various -- you  
6 know, the -- all of the parties that were impacted were  
7 discussed both prior to the plan being filed as well as  
8 subsequent to it being filed. It has been discussed in -- in  
9 -- but I don't -- as I sit here, I don't -- I don't have a  
10 list of those parties.

11 Q Okay. You said all the parties that are impacted. Were  
12 there any patients contacted?

13 A I'm not sure, actually.

14 Q Okay. Were any unsecured creditors? Other than the  
15 secured creditors who have a deficiency claim?

16 A We definitely discussed it with some of the landlords. I  
17 don't know specifically whether this was discussed, but I know  
18 there were lots of conversations with landlords under -- under  
19 the claims.

20 Q I don't think I understand. Are you saying that  
21 landlords, you did discuss a third-party release with  
22 landlords?

23 A I personally had conversations with landlords on various  
24 things. I don't recall whether this was one of those.

25 Q Okay. So you don't remember whether you talked about the



1 third-party release with landlords?

2 A It would have been several months ago. No, I don't  
3 recall.

4 Q Okay. So could have negotiated, could have not  
5 negotiated?

6 A I think that's what I said.

7 Q What did you say?

8 A I think I said I don't recall what, you know, which of the  
9 -- with negotiations with the landlord, I don't recall exactly  
10 what parts we talked about, whether it was the releases or  
11 other factors with their claim. But I was on calls with them  
12 regarding their claim. I don't recall whether or not the  
13 releases was talked about on that call.

14 Q Okay. Which landlords?

15 A For -- FVP is one of them. There's a couple other  
16 ones. I don't --

17 Q To your knowledge, has any releasing party given an  
18 indication that they intend to bring a claim against the  
19 released parties? Or any of the released parties?

20 A I don't know.

21 Q Okay. Are parties who opt out of the release bound by the  
22 injunction that's in the plan?

23 A I'd have to look at the provision in the plan.

24 Q Okay. Do releasing parties receive a release from the  
25 released parties?

1 A Again, I'd have to see the provision in the plan that  
2 specifies that.

3 Q Okay. If I represented to you that the definition of  
4 Released Parties doesn't include releasing parties, would that  
5 surprise you?

6 A No, I'd have to see it.

7 Q Okay.

8 MS. KIPPES: No further questions, Your Honor.

9 THE COURT: All right. Thank you, Ms. Kippes.

10 All right. So, what I'll do is, before I go to the  
11 Debtors, Ms. Wise, do you have any questions for Mr. Rundell?

12 MS. WISE: No, Your Honor, I do not.

13 THE COURT: Thank you. All right. Mr. Muenz?

14 MR. MUENZ: Thank you, Your Honor. Jon Muenz for the  
15 Debtors.

16 CROSS-EXAMINATION

17 BY MR. MUENZ:

18 Q Mr. Rundell, were there discussions with economic  
19 stakeholders about who would be covered under the third-party  
20 releases? And by that, I mean lenders, the Committee, buyers,  
21 other stakeholders?

22 A Yes.

23 Q Can you describe for the Court briefly what those  
24 discussions relate to and what you know about them?

25 A Yes. I think, as I previously mentioned, both the

1 Committee, the various buyers, there's lots of considerations  
2 that go in the deal, and this was one of them. This was  
3 heavily negotiated by lots of -- by a lot of the third-party  
4 economic stakeholders as we went through the case. And  
5 although it was in the plan in the original, it doesn't  
6 prevent parties from negotiating that after filing.

7 Q Thank you, Mr. Rundell.

8 MR. MUENZ: No further questions.

9 THE COURT: Anyone else have any questions for Mr.  
10 Rundell?

11 I have just a few, sir.

12 EXAMINATION BY THE COURT

13 THE COURT: Was it you that did the heaviest amount  
14 of negotiations with the buyers, the prepetition lenders, and  
15 the like?

16 THE WITNESS: I was certainly involved. It really  
17 does depend on what the issues were. So, you know, there's a  
18 lot of operational issues that were involved, so I had a whole  
19 management team that worked on that. There's a thousand  
20 employees that were impacted.

21 So it depends on what they were, but all the key important  
22 aspects was either run by me or I was involved in, but there's  
23 a lot. You know, so this is one piece of it. But when  
24 you're, you know, I mean, when you have 46 locations and  
25 250,000 patients, this was not top of mind every conversation.

1 There's a lot of -- this is one important piece to people, but  
2 there's other aspects. You know, continuity of care is also a  
3 very important aspect. So, but yes, I was at the center of  
4 all negotiations with both the Committee, the lender, and the  
5 buyers.

6 THE COURT: All right. So, with respect to the  
7 lenders and the buyers, is it your testimony that the third-  
8 party releases were an important part of the negotiation for  
9 the various things that were provided by those parties in the  
10 plan?

11 THE WITNESS: It is.

12 THE COURT: Okay. And was that heavily negotiated by  
13 you or primarily by counsel or someone else?

14 THE WITNESS: It was heavily negotiated by both,  
15 because there's legal aspects of it that I don't involve in.  
16 But it was heavily negotiated with the buyers and the lenders.  
17 All the -- all the economic stakeholders.

18 THE COURT: Okay.

19 THE WITNESS: This issue was.

20 THE COURT: All right. Thank you, Mr. Rundell.

21 Is there, Ms. Kippes, any redirect, so to speak?

22 MS. KIPPES: No, Your Honor.

23 THE COURT: Okay. All right. Thank you very much.  
24 You may step down, sir.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Thank you for your testimony.

2 (The witness steps down.)

3 MS. KIPPES: Okay.

4 THE COURT: Your next witness?

5 MS. KIPPES: Your Honor, I'm not -- I don't have any  
6 other witnesses to call. I'd just like to move the U.S.  
7 Trustee's exhibits in.

8 THE COURT: Of course.

9 MS. KIPPES: UST A through UST J. I think that they  
10 are stipulated to, but I'll let Mr. Grossi say what he needs  
11 to say.

12 THE COURT: All right. I've got a binder of A  
13 through J. And those can be found at 453, Ms. Kippes?

14 MS. KIPPES: Yes, Your Honor.

15 THE COURT: All right. Any objection to the  
16 admission of the UST's A through J?

17 (No response.)

18 THE COURT: The Court would note that much of this,  
19 if not admitted as exhibits, the Court could probably take  
20 judicial notice of much of what's in the exhibits as well.

21 (Pause.)

22 THE COURT: Mr. Grossi, perhaps you didn't hear me.

23 MR. GROSSI: Oh, I'm sorry, Your Honor.

24 THE COURT: That's okay. Does the Debtor stipulate  
25 to the admission of the UST's A through J?

1 MR. GROSSI: We do, Your Honor.

2 THE COURT: Okay. Excellent.

3 MR. GROSSI: Apologies. So sorry.

4 THE COURT: No problem. A through J is hereby  
5 admitted.

6 MS. KIPPES: Thank you, Your Honor.

7 (United States Trustee's Exhibits A through J are  
8 admitted.)

9 MS. KIPPES: I'd also request that the Court take  
10 judicial notice of the schedules and Statements of Financial  
11 Affairs filed in each of the bankruptcy cases.

12 THE COURT: Any objection to the Court taking  
13 judicial notice of the schedules and the SOFAs?

14 Hearing no objection, the Court will take judicial notice  
15 of those, as it is appropriate and on her docket.

16 MS. KIPPES: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 MS. KIPPES: The U.S. Trustee rests.

19 THE COURT: All right.

20 Ms. Wise, do you wish to call any further witnesses?

21 MS. WISE: No, Your Honor. Thank you.

22 THE COURT: All right. And do you have any further  
23 evidence?

24 MS. WISE: No, I don't.

25 THE COURT: Okay. Thank you.

1           Okay. In terms of -- and I gather not, based upon the  
2 agenda -- is there anyone else who wishes to lodge any sort of  
3 objection at this time?

4           All right. Hearing no responses, Mr. Grossi, does the  
5 Debtor have any other further evidence or witnesses with  
6 respect to confirmation?

7           MR. GROSSI: We don't, Your Honor.

8           THE COURT: All right. So it looks like what we are  
9 prepared for, then, is closing argument. Let me take a few  
10 estimates with respect to closing arguments. I think the  
11 answer is the same no matter what, that we'll be coming back  
12 at 2:30, but let me find out.

13          Ms. Kippes?

14          MS. KIPPES: Your Honor, probably not more than half  
15 an hour. And as the Court may know, I tend to overestimate  
16 because I don't want to disappoint you by taking your time.

17          THE COURT: You're fine. You're fine no matter what.

18          Ms. Wise, how much time do you estimate for your closing?

19          MS. WISE: I estimate maybe 15 minutes, maybe 20.

20          THE COURT: Okay. All right. Mr. Grossi, on behalf  
21 of the Debtors?

22          MR. GROSSI: Subject to hearing the other closing, I  
23 would expect it to be under 10 minutes, Your Honor.

24          THE COURT: Okay. All right.

25          Anyone else wish to make remarks in closing, so I can just

1 factor it in?

2 All right. So, based upon the estimates, here's what I'm  
3 going to recommend. I've got a 1:30 and a 2:00 o'clock  
4 docket. I think I'll complete those both by 2:30. And I  
5 think it's probably a good time for everyone to come back at  
6 that point.

7 What I would do is I would encourage the Debtors and the  
8 Committee to get with Ms. Kippes and Ms. Wise, if possible, to  
9 -- if there is any narrowing based upon the agreement reached  
10 with the Committee, if there's anything that is specific to  
11 shareholders, that is specific to patients and the like, if  
12 the releases have been narrowed in any way, the inclusion of  
13 fraud and gross negligence exceptions, just to make sure that  
14 everyone is talking about the right version of the plan.  
15 Okay?

16 And likewise, if it's not the second amended plan, I  
17 recognize that the Committee resolution is not going to be in  
18 there, but if it's something other than that, then the Court  
19 wants to see what we're talking about, too, at the same time.

20 So, with that, the Court will stand in recess until 1:30  
21 from the Court's perspective, until 2:30 for this case. All  
22 right.

23 THE CLERK: All rise.

24 THE COURT: Thank you. I'll be on the bench for a  
25 second.



1 (A recess ensued from 12:14 p.m. until 2:41 p.m.)

2 THE CLERK: All rise.

3 THE COURT: Please be seated. All right. Good  
4 afternoon again. We're going to go on the record in Case No.  
5 24-80093, CareMax, Inc.

6 As I recall when we finished, I think evidence had been  
7 closed and we were prepared for closing arguments. Is there  
8 anything further? Mr. Grossi?

9 MR. GROSSI: Your Honor, if I may, at Your Honor's  
10 suggestion we had several conversations during the break.  
11 After speaking with Ms. Kippes, we did want to clarify for the  
12 record that --

13 THE COURT: Sure.

14 MR. GROSSI: -- opt-out notices were not delivered to  
15 patients as patients. So, we have hundreds of thousands of  
16 patients. They were not delivered opt-out notices. Opt-out  
17 notices. We're not seeking third-party releases from those  
18 patients. There's a discrete number of patients who have  
19 claims against the Debtors. We delivered the bar date order  
20 per our procedures, but we're not seeking third-party releases  
21 against patients.

22 Further, consistent with the statements that we've been  
23 making on the record, we were -- and have consulted with the  
24 parties, including the Creditors' Committee, the buyer, and  
25 the Secured Lenders -- we're going to add clarifying language

1 to the confirmation order that we're not seeking releases from  
2 patients against doctors with respect to medical malpractice  
3 claims. I know that's been a concern of a number of parties,  
4 and we just wanted to add some comfort language that we're on  
5 the same page on that front.

6 I know that Your Honor asked some questions to our witness  
7 from Stretto. We are working with Stretto and will file a  
8 supplemental affidavit that explains Stretto's interactions  
9 with Broadridge and how they were able to get comfort that  
10 Broadridge effected service to the shareholders.

11 THE COURT: Yes, thank you. And again, right when  
12 the WebEx was probably cutting off, that is something the  
13 Court would ask, is that -- and again, I'm still willing to  
14 hear closing arguments with respect to shareholders and the  
15 like -- but I do want to better understand how and what was  
16 delivered to the shareholders and get the record supplemented  
17 in that way. So thank you very much, Mr. Grossi.

18 MR. GROSSI: Thank you, Your Honor. With that, I'll  
19 let Ms. Kippes provide her closing.

20 THE COURT: All right. And Mr. Grossi, am I correct  
21 that the operative language that we'll be discussing today is  
22 in the second amended plan?

23 MR. GROSSI: Yes, Your Honor. I concur.

24 THE COURT: Okay. Thank you.

25 MS. KIPPES: Your Honor, before I get to my main

1 argument, I just wanted to address an issue that I raised to  
2 the Court in evidence about the definition of Releasing Party.  
3 This needs to be clarified either by the Debtors or I'd  
4 request that the Court do it. Definition of Releasing Party,  
5 which is in Article 1 of the plan. I'm looking at Docket 480-  
6 2, which I think is the second --

7 THE COURT: Yes, I'm following you.

8 MS. KIPPES: -- the second amended plan. The  
9 definition of Releasing Party on Page 20 -- well, it's 23 of  
10 81 at the top; at the bottom, it's 16. It says that a  
11 Releasing Party includes all holders of claims or interests  
12 that vote to accept the plan. And then you go way down and it  
13 says, provided that in each -- and then flip to Page 17 --  
14 case an entity shall not be a Releasing Party if it elects to  
15 opt out of the third-party release.

16 And I asked for clarification right before we started  
17 here, and I still don't have it. If someone voted in favor of  
18 the plan and also opted out, their opt-out should be  
19 recognized. And that's -- the U.S. Trustee does not approve  
20 of opt-outs and it does not agree that opt-outs work. But  
21 nevertheless, I mean, I think it's clear that if somebody says  
22 "I like my treatment," check box, "but I don't like this  
23 release," check box, that ought to be respected.

24 That's -- so I -- that's on that discrete definitional  
25 issue, which I'll just leave for now. And then I have a brief

1 argument as well.

2 THE COURT: Please.

3 CLOSING ARGUMENT ON BEHALF OF THE UNITED STATES TRUSTEE

4 MS. KIPPES: All right. All right. And Your Honor,  
5 once again, Meredyth Kippes on behalf of the United States  
6 Trustee.

7 First, the United States Trustee adopts the arguments made  
8 by me at the hearing on December 17th in connection with the  
9 conditional approval of disclosure statement. The U.S.  
10 Trustee also stands on her objection at Docket Entry #452 and  
11 the arguments set forth therein. But I would like to  
12 highlight a few points in addition to what is already before  
13 the Court.

14 At the beginning of the hearing, Mr. Grossi said that,  
15 because they had received 66 opt-out forms, the opt-out  
16 worked. The United States Trustee respectfully disagrees.  
17 Mr. Karpuk testified that many of the opt-outs on Exhibit D-  
18 60, the release report, are from the same creditor. In other  
19 words, there are multiple opt-outs from the same creditor.  
20 When you look at the number of individual creditors/entities  
21 that opted out, that brings the number of creditors who opted  
22 out down to 43.

23 By my count, there are 442 scheduled general unsecured  
24 creditors among the Debtors. Some of them are duplicates, I'm  
25 sure. But roughly those 43 creditors who opted out account

1 for about 10 percent of the scheduled general unsecured  
2 creditors. And those opt-outs might not be all unsecured. I  
3 assume that they are.

4 The bulk of the general unsecured creditors are in CareMax  
5 Medical Group, LLC, Case No. 24-80102-mvl-11. That case lists  
6 321 general unsecured creditors. Exhibit D-60 shows nine opt-  
7 outs with regard to CareMax Medical Group, LLC. That's two  
8 percent of the creditors in CareMax Medical Group, LLC who  
9 returned an opt-out form.

10 As to the parties who received nonvoting notices, the  
11 numbers are bleaker. Mr. Karpuk testified that only five  
12 entities that received a nonvoting notice opted out. That's a  
13 poor showing.

14 The certificate of service at Docket Entry #389 shows,  
15 again, by my count -- and I did sit in my office and count,  
16 Your Honor -- 2,099 nonvoting notices went out, and that  
17 includes nonvoting notices that went out to the two entities  
18 that were to serve the shareholders. And so only five opt-  
19 outs were returned from the nonvoting notices, according to  
20 Mr. Karpuk's testimony. That's 0.2 percent of the nonvoting  
21 notices returning opt-out forms.

22 And there may be a good reason for that. The nonvoting  
23 notices which are attached to the solicitation order as  
24 Exhibit 6-A and 6-B, and they're at UST-C, okay, Page 2 of the  
25 nonvoting notice tells the recipients that they are not

1 entitled to vote.

2 And we can't know because none of them are here, but it's  
3 not beyond the realm of possibility that people just stopped  
4 reading there. It was not until Page 3 that the third-party  
5 release and the need to opt out is mentioned, such that these  
6 parties who would not otherwise need to respond to the plan  
7 are notified that they do need to respond if they do not want  
8 to have a broad release of the panoply of third parties  
9 defaulted upon them.

10 And then at Page 4 of the nonvoting notice is the opt-out  
11 form, and it is entitled, Optional: Opt-Out Form.

12 Further, as discussed in the U.S. Trustee's objection to  
13 confirmation and as I argued at the hearing on conditional  
14 approval of the disclosure statement, as a matter of law opt-  
15 outs cannot confer consent. Post-*Purdue*, we know that the  
16 Supreme Court has determined that nonconsensual third-party  
17 releases are not a permissible plan term.

18 As discussed in the U.S. Trustee's briefing and in my  
19 argument on December 17th, you cannot do by default what you  
20 cannot do straightforwardly. Defaulting parties into giving a  
21 release of nondebtors is not consent to that release. Default  
22 does not consent -- to confer consent to a release of an  
23 unknowable list of claims. Default is not enough to confer  
24 consent to a release of an unidentified list of related  
25 parties.

1 And the default concept is important here. For instance,  
2 no one would say that a party against whom a default judgment  
3 is imposed has agreed to that judgment being entered, but that  
4 is exactly what the Debtors are asking you to do in the  
5 context of a third-party release with an opt-out. They are  
6 asking you to construe a creditor's default as affirmative and  
7 non-consent, and it's just not.

8 This is why Judge Everett looked to the contract model in  
9 *Ebix* to determine whether there has been affirmative consent  
10 to the third-party release. As the Court knows, the general  
11 rule of contracts is that silence cannot manifest consent.  
12 State law governs whether silence is consent, and none of the  
13 requirements under state law governing unilateral contracts  
14 applies in this case.

15 Under the state law of contracts, whether you apply Texas  
16 law or New York law, which is the governing law in the plan,  
17 there are three such exceptions that may render silence as  
18 consent. One, assent to contract is supported by the party's  
19 course of conduct; two, assent to contract arises where the  
20 offeree accepts a benefit of the offer; and three, assent to  
21 contracts arises where the offeree misleads the offeror that  
22 the offeree may remain -- by remaining silent intends to  
23 accept the offer.

24 And with regard to the third one, Judge Everett explained  
25 in his 4 *West* ruling that "The exception does not apply absent

1 some element of deception or dishonesty."

2 There is no course of conduct between the third parties  
3 and the releasing parties that would imply consent to a third-  
4 party release. There's no benefit of the offer to release --  
5 the offer to release nondebtor third parties for the releasing  
6 parties to accept.

7 And the offeree's silence and their failure -- their  
8 failure to opt out is not misleading. There's no deception or  
9 dishonesty here on the part of the releasing parties who did  
10 not submit an opt-out form. They are simply being defaulted  
11 into giving a release.

12 Finally, the release language in the plan regarding third-  
13 party releases is broad and far-reaching. Related parties  
14 could reach deep into corporate structure, and maybe even to  
15 relatives of individuals. Personal injury claims or claims  
16 wholly unrelated to these bankruptcy cases could conceivably  
17 be reached by the third-party release.

18 The U.S. Trustee is gratified by the removal or the  
19 clarification with regard to patients in the third-party  
20 release, but it is not enough. The releasing parties -- the  
21 released parties are receiving an extraordinary gift of third-  
22 party release with no consideration. There's not a mutual  
23 release. There is nothing.

24 And to the extent the Debtors would like to characterize  
25 distributions under the plan as consideration for a release,



1 creditors are entitled to distributions under a plan whether  
2 or not they grant a release.

3 Thank you, Your Honor. I am ready for any questions, if  
4 you have any.

5 THE COURT: Let me hear the remainder of the  
6 arguments and then I'll --

7 MS. KIPPES: Okay.

8 THE COURT: I'll address any questions at that time.  
9 Thank you very much, Ms. Kippes.

10 MS. KIPPES: Thank you.

11 THE COURT: Ms. Wise?

12 CLOSING ARGUMENT ON BEHALF OF THE SECURITIES AND EXCHANGE  
13 COMMISSION

14 MS. WISE: Good afternoon, Your Honor. For the  
15 record, Jolene Wise appearing on behalf of the Securities and  
16 Exchange Commission.

17 As you know, we filed our limited objection at Docket 466,  
18 which sets out a lot of information which has been circulated  
19 to the parties and to Your Honor. I want to focus on the  
20 facts in this case regarding primarily shareholders.

21 THE COURT: Uh-huh.

22 MS. WISE: Shareholders are a nonvoting class. Their  
23 interests are being canceled. They're not receiving any  
24 distribution, meaning they're not receiving any consideration.  
25 The notice of nonvoting status is a lengthy 10 pages, and

1 while the release is disclosed and conspicuous with the  
2 single-spaced legalese paragraphs, which lawyers and perhaps  
3 sophisticated investors might be able to understand, but would  
4 the average retail investor be able to understand what rights  
5 they're being asked to relinquish? And did the shareholders  
6 receive the nonvoting notice? And we want to look at that  
7 point first.

8 The Debtors requested and received court authority to not  
9 file the list of equity holders. That's at Docket 78, Page 3.  
10 Ascertaining addresses for return mail was waived in the  
11 solicitation order at Docket 270 at Page 5. We learned today  
12 that a little -- that over 1,700 nonvoting status packages  
13 were provided through a third-party vendor for distribution.  
14 And having not seen the additional supplemental information  
15 that Debtors' counsel indicated is coming, I'm going to go  
16 forward with what I have heard today and do know. The Debtor  
17 has 3.8 million shares issued and outstanding. And while  
18 about 60 percent of those shares are held by six parties, that  
19 leaves a significant number of shares held by retail public  
20 shareholders.

21 There's no confirmation that record holders received the  
22 notice, and there's no confirmation that nominee holders  
23 forwarded the notice or shareholders timely received the  
24 notice or beneficial holders received the notice at all or in  
25 a timely manner.

1 And I just want to give an anecdote that in the middle of  
2 December I mailed my holiday card at the main post office in  
3 Chicago and just found out last week that some are being  
4 delivered here in Chicago. So the mail system, especially  
5 over the holidays, I believe they've been overwhelmed. And  
6 again, we're not sure who received the notices and if they  
7 were received timely.

8 Ms. Kippes pointed out the 66 opt-out forms, that many  
9 were duplicative. Many -- most or all were by creditors and  
10 possibly a landlord. But it appears that none were  
11 shareholders. And again, we don't know if shareholders  
12 received the notice, again, in a timely fashion or knew what  
13 to do with them.

14 So I want to turn now to did the shareholders understand  
15 the notice. Even if they received them, can an average  
16 shareholder follow the several pages of single-spaced  
17 legalese, all the instructions? I think it's Page 3 or 4 of  
18 the nonvoting status notice, at the bottom it says, This is  
19 for informational purposes only. Seeing that, what would an  
20 average shareholder think? And then, as Ms. Kippes pointed  
21 out, the opt-out form says optional.

22 Do the shareholders understand what rights they are giving  
23 up, especially in light of the third-party release not carving  
24 out actual fraud, willful misconduct, and gross negligence?

25 Additionally, in the package, the nonvoting status

1 package, looking at the ninth page of the ten pages, or I  
2 believe it's Page 5 of the opt-out form, shareholders are  
3 required to certify four statements to the Bankruptcy Court  
4 and the Debtors, including a statement that holders have  
5 received a copy of the nonvoting status to holder conclusively  
6 presumed to accept the plan, when in fact the shareholder  
7 received the notice of nonvoting status to holders of impaired  
8 claims or interests conclusively presumed to reject the plan.  
9 I believe that this discrepancy would cause confusion for  
10 those desiring to opt out but being unwilling to certify to  
11 the Court. It would, to me, as a professional, as a lawyer  
12 reading it. I think an average shareholder would be confused  
13 about, what am I supposed to do? Do I certify to the Court  
14 and is that lie? Am I going to be in trouble?

15 When thinking about it, can/would/should shareholders be  
16 expected to take on the burden of hiring an attorney to advise  
17 them, especially when their shares are canceled, they've lost  
18 their investment, and they're receiving no consideration in  
19 exchange for that?

20 So, under these circumstances, respectfully, the SEC  
21 believes the Court should not assume the shareholder who did  
22 not submit an opt-out form received the form, was willing to  
23 certify they received a document they did not receive, and  
24 fully understood they were giving up rights against released  
25 parties, especially without the carve-out in the third-party

1 release.

2 And turning to the carve-out, it's particularly harmful to  
3 shareholders to be precluded from pursuing (inaudible) based  
4 claims. And as the Debtor mentioned, these might be  
5 derivative claims, but we don't know. And there could be  
6 additional claims out there that affect creditors and possibly  
7 shareholders outside of actual fraud, but they are being  
8 released. And what this does is it releases wrongful  
9 behavior, and is that right? And in doing so, provides a  
10 greater benefit to releasees to which they're not entitled,  
11 and they wouldn't be entitled if they filed for bankruptcy  
12 themselves.

13 Additionally, the plan does provide a gatekeeping  
14 provision which creates a mechanism which would determine  
15 which lawsuits may go forward, so if the Debtors are concerned  
16 about a flood of lawsuits against the released parties, they  
17 had already taken care of that with the gatekeeping provision.

18 The proposed confirmation order at Paragraph 129 which  
19 addresses executory contracts surrounding the purchase and the  
20 core center purchasers, those provide a carve-out in this  
21 discrete instance for gross negligence and willful misconduct,  
22 and so I have to question why those two things, along with  
23 actual fraud, cannot be included in the third-party release.

24 In the SEC's view, silence by a shareholder who is not  
25 allowed to vote, is receiving no consideration under the plan,

1 and may not have received notice or understood the notice, is  
2 not an affirmative act constituting consent. And therefore,  
3 the SEC respectfully requests this Court to require the  
4 released be amended to carve out actual fraud, willful  
5 misconduct, and gross negligence, and to either deny  
6 confirmation of the plan, as the release is not consensual, or  
7 alternatively deem shareholders' silence is not an affirmative  
8 act of consent. Therefore, shareholders are not bound by the  
9 third-party release.

10 Are there any questions?

11 THE COURT: Not at this time, Ms. Wise. Thank you  
12 very much for your argument. Appreciate it.

13 Anyone else wish to be heard with respect to confirmation  
14 before I go to the Debtors?

15 Mr. Grossi?

16 CLOSING ARGUMENT ON BEHALF OF THE DEBTORS

17 MR. GROSSI: Thank you, Your Honor. Anthony Grossi,  
18 Sidley Austin, on behalf of the Debtors.

19 We will primarily rely on our papers and the evidence  
20 before the Court. I just wanted to highlight a few points  
21 after hearing some of the arguments by Ms. Kippes and Ms.  
22 Wise.

23 The Fifth Circuit and courts in this district routinely  
24 find that notice is consent. That notice is not predicated on  
25 a brightline response rate. We served notice on parties, and

1 the evidence shows that people read that notice, they elected  
2 to opt out, and they turned that ballot in. The process that  
3 we served notice on shareholders is consistent with how notice  
4 is provided to equity holders in analogous situations.

5 I understand that the Court and Ms. Wise would like to  
6 better understand the details around that, and we absolutely  
7 will provide that. But that affidavit will show that it's  
8 precisely how notice is provided to shareholders in virtually  
9 every shareholder interaction.

10 Further, not a single shareholder objected to the plan.  
11 Not one. No one's here objecting or complaining about the  
12 case. In addition to the publication notice that we had, this  
13 case has received its fair attention in the press. If there  
14 was a shareholder who had a grievance, we strongly suspect  
15 they would be here before the Court today vocalizing their  
16 concerns.

17 Only the SEC has risen on behalf of the shareholders, and  
18 on the behalf of hypothetical shareholders. Our third-party  
19 releases were absolutely integral to our Chapter 11 plan and  
20 the overall restructuring transaction. It was a key item and  
21 something that Your Honor may have observed with the reams of  
22 paper that was on the docket previous to settlement that was  
23 reached.

24 It was a key component of the settlement. It was  
25 important to the Committee. It was important to our buyers,

1 who are purchasing reorganized debtors and assets from the  
2 estates. And it was important to our secured lenders, who  
3 expended new capital and who are taking a significant  
4 impairment on account of their secured debt.

5 With respect to consideration, these parties, the secured  
6 lenders expended capital. The Committee is compromising  
7 rights. The buyers are putting in cash consideration. And  
8 our board and our officers shepherded this case through this  
9 process.

10 The alternative to all of this is it could have been a  
11 massively value-destructive liquidation. There could not have  
12 been returns to creditors, and it could have resulted in  
13 potential liability rather than release to shareholders.  
14 These Chapter 11 cases are a home run result for all  
15 stakeholders, and the support that we have before the Court is  
16 indicative of that. Not a single economic stakeholder is up  
17 here objecting to these releases, only the Government.

18 We respectfully request that the Court overrule these  
19 objections, approve the third-party releases proposed in our  
20 plan, subject to the clarifying edits we discussed at the  
21 outset, and confirm the case subject to the order that we're  
22 proposing.

23 Thank you, Your Honor.

24 THE COURT: All right. Thank you.

25 I'm going to take a brief recess, and I'll come out and



1 I'll discuss with you my ruling. And here's where I am right  
2 now. And so before I give a ruling when I come out, I'll give  
3 parties an option to speak further to the extent that there's  
4 any movement.

5 I appreciate that the Debtor has clarified that patients  
6 are not being held to the third-party releases. What I'll say  
7 with respect to this is none of the issues with respect to  
8 third-party releases affect whether or not, if you had claims  
9 against these Debtors, you had to file them. And so once you  
10 get to the due process of receiving the bar date notice,  
11 whether or not you sent in a proof of claim form, and  
12 essentially that which the plan does to claimants, that's all  
13 aside from third-party releases. So I'll say that, again, I  
14 am thankful that that clarification is going to be made.

15 I can tell you that with respect to third-party releases,  
16 one of the things that is always key to this Court is due  
17 process. I appreciate that the process worked to the extent  
18 of about 10 percent with respect to creditors. In the whole  
19 scheme of things, as big as these cases are, as much dollars  
20 as are involved, and really with the importance of what the  
21 Debtor provides to the community, all of that being equal, it  
22 was a relatively small number of claimants in the case. I  
23 think we have less than 500 general unsecured claimants. And  
24 so although we have in the neighborhood of 10 percent of opt-  
25 outs -- and I grant the United States Trustee, all 66 do not

1 represent 66 individual -- but at the same time, individual  
2 creditors are what they are. I don't remember the exact name  
3 of the entities, but KPV RE Florida is a different entity than  
4 KPV RE Georgia, for example, and I'm making up a hypothetical  
5 name there.

6 So, from that perspective, the Court sees some  
7 differentiation there.

8 I am troubled that any release would not have a carve-out  
9 for fraud, willful misconduct, or gross negligence. I don't  
10 believe that I've ever approved one without that, so the  
11 Debtors need to consider that.

12 The next thing that I'll note is if the Debtor is going to  
13 tell me that there are narrow third-party releases, I really  
14 need to take a look at your definition of Related Party. I'm  
15 not sure who misses related party. That is a really, really  
16 broad definition.

17 Although there is some evidence of there being  
18 consideration for releases for those that receive under the  
19 plan, I appreciate the compromise and the settlement that was  
20 reached with the Unsecured Creditors' Committee, and that does  
21 bear a lot of weight with respect to the Court, because at the  
22 end of the day, you are correct, Mr. Grossi, the economic  
23 participants and the economic beneficiaries under this plan  
24 have primarily agreed.

25 But at the same time, I can't approve something -- I'll

1 just give you an example. Any person, any entity, current or  
2 former directors, managers, officers, Committee members,  
3 members of any Governing Body, which has its own definition,  
4 equity holders, affiliated investment funds, investment  
5 vehicles, managed account funds, predecessors, participants,  
6 successors, assigns: I can literally go on for what appears  
7 to be 10 more lines. In what world is a shareholder of a  
8 released party entitled to a release, a third-party release?  
9 That is overly broad. And so I'll let you guys take a look at  
10 it before I come back out.

11 With respect to the opt-outs, the only time I ever approve  
12 opt-outs is if, at the end of the day, service can be proven.  
13 I will require that the affidavit or a declaration that  
14 explains the service to the shareholders be out there.

15 I'm still going to consider a little bit harder of whether  
16 or not the shareholder opt-out works. Query whether it's  
17 something that is critical to the Debtors.

18 Again, if consideration is not a requirement from the  
19 Debtors' perspective, what are they getting? They're getting  
20 canceled. They're getting zeroed out. And so what cause of  
21 action could a shareholder have against the purchasers? What  
22 cause of action could a shareholder have against the First  
23 Term DIP Lenders? So I want to think a little bit more about  
24 that and find out the importance of that to the parties.

25 And the only other thing is with respect to the gatekeeper

1 provision. I know that that's been brought in a lot of  
2 different plans in this district. Actually, I think, approved  
3 by the Fifth Circuit. I want to make clear to the parties  
4 that notwithstanding anything in the plan, that no party is  
5 going to be bound by a release if they didn't receive notice  
6 of the plan and an opportunity to opt out of the release  
7 thereunder. So, again, service is going to be key. Due  
8 process is going to be key.

9 So I'll give the parties the benefit of those preliminary  
10 comments. I'm going to go and sit with your order for a  
11 moment, and I'll come out and give my ruling.

12 THE CLERK: All rise.

13 (A recess ensued from 3:12 p.m. to 3:27 p.m.)

14 THE CLERK: All rise.

15 THE COURT: Please, be seated. All right. We're  
16 going to go back on the record in Case No. 24-80093.

17 All right. Before the Court is the confirmation of the  
18 Debtors' plan in CareMax. Based upon the settlement reached  
19 with the Unsecured Creditors' Committee on the eve of the  
20 hearing, there was, I guess, little disagreement, few  
21 objections remaining with respect to the plan and the primary  
22 let's just say 1129 and 1123 factors.

23 And so the Court finds that, obviously, with respect to  
24 those factors, that the plan satisfies the greater part of  
25 Section 1129 of the Code as it pertains to confirmation in

1 this context.

2 Most of the angst, if you will, was with respect to the  
3 releases that were found in the plan. This Court in  
4 particular has approved opt-out releases in a number of cases,  
5 but as I've always said, I'll turn a phrase from my chief  
6 judge, facts matter and due process matters, and I always  
7 require both.

8 There was no occasion for the Supreme Court to express a  
9 view on what constitutes a consensual release in its recent  
10 decision in *Purdue Pharma*, and the Supreme Court confined its  
11 decision then to the question presented.

12 When I have approved opt-outs in my court, it's always  
13 based upon the evidence that the affected parties were  
14 afforded constitutional due process and a meaningful  
15 opportunity to opt out.

16 As recently as in the *Serta* opinion that just came down by  
17 the Fifth Circuit, the Fifth Circuit there speaks about  
18 implied consent. It speaks about a situation in which a party  
19 was presented with an opportunity to object and did not. And  
20 so, from this perspective, the Court has routinely gotten  
21 comfortable with the opt-out process as it pertains to plans  
22 of reorganization. And specifically as in this case, we have  
23 10 percent of those creditors who received opt-out forms  
24 together with their ballots and in fact did so.

25 Likewise, based upon the consideration that was given to

1 creditors, based upon the settlement specifically with the  
2 Official Committee, the Court finds that there was  
3 consideration that was given to the various primary named  
4 released parties under the plan, each of which forms a very  
5 critical piece towards the confirmation of the plan, whether  
6 that be the purchasers, whether that be the first term lien  
7 debt holders, that each of those has provided consideration as  
8 part of the overall reorganization of the Debtors.

9 I don't have any problem granting the discharge in this  
10 case. There will be a wind-down estate. Part of the practice  
11 was actually not sold at auction. And so from that  
12 perspective, I'll dispose of the discharge issue very quickly.

13 I won't go deep into the opt-outs themselves. What I'll  
14 say is, again, parties in interest were provided with detailed  
15 notices about the plan, the deadline to object to the plan,  
16 the voting deadline, and the opportunity to opt out.

17 The language was bolded. The language was conspicuous.  
18 And here, save and except with respect to shareholders, I do  
19 believe that the balloting process and the opt-out process not  
20 only worked but it was designed to do so and it was designed  
21 for people to be able to take in that information and  
22 understand that if they were served with it that they had a  
23 duty to act.

24 I also have said numerous times that I require releases to  
25 be narrowly tailored to the case and that they contain a

1 carve-out for claims unrelated to the Debtor, for claims  
2 preserved by the plan or related documents, or claims arising  
3 from an act or omission involving actual fraud, gross  
4 negligence, willful misconduct, or criminal conduct. And for  
5 those reasons, any release that's going to be granted in the  
6 plan will require a carve-out for just those things: fraud,  
7 gross negligence, willful misconduct, or any sort of criminal  
8 conduct.

9 For the aforementioned reasons, I find the definition of  
10 Related Party entirely too broad. I recognize that the  
11 settlement with the Committee is going to have to be put into  
12 a newly-amended plan that will be put before the Court for  
13 confirmation.

14 To the extent the Debtors want one more crack at some  
15 language, either in a related-party concept to do as least  
16 damage to the otherwise-defined terms in your plan, or if you  
17 want to work the actual parties that you think are related  
18 parties and deserve a release in there. I'll give you one  
19 more crack at it.

20 But beware, I will line-item veto it if I think that the  
21 definition is too broad, because the one that's contained in  
22 the definitions in the plan now may include me, as much as I  
23 can tell. It's entirely too broad. So I'll let you take a  
24 shot at that.

25 Likewise, if anyone has been designated as -- there's a

1 process in the third-party releases about the designations by  
2 Mr. Borkowski. If there has been somebody designated, it  
3 should be a little clearer. I think it was to be designated  
4 prior to the hearing. So if someone is designated as a  
5 released party, that should be clear in the plan.

6 With respect to the gatekeeper provision, I want some  
7 clarifying language in there that, notwithstanding the  
8 foregoing, no party shall be bound by a release that did not  
9 receive notice of the plan and an opportunity to opt out of  
10 the releases thereunder. So, again, we don't have to fight  
11 about the gatekeeper provision if they didn't receive notice.

12 The releasing party language, I agree with the United  
13 States Trustee, seems to be a little unmatched to the terms of  
14 the plan. If someone accepted the plan and opted out, I think  
15 the opt-out is good, and maybe that's just a definitional bust  
16 there. So I'll ask you to look at that.

17 With respect to the third-party releases themselves,  
18 there's certainly evidence in the record that they were an  
19 integral part of the plan and were the conditions of the  
20 transactions themselves.

21 I do believe that plans are living and breathing  
22 contracts, and that often the expectation of releases is a  
23 core consideration among the parties instrumental in the  
24 development of the plan and crucial in facilitating and  
25 gaining support for a plan, including any concessions that



1 were made along the way by buyers, by first lien lenders, and  
2 parties of that measure.

3 And so the Court will approve the third-party releases  
4 with two exceptions. Number one, with respect to the  
5 shareholders, for the reasons articulated by Ms. Kippes and  
6 Ms. Wise, I find the shareholder opt-outs to have been  
7 confusing. Again, you're receiving a nonvoting status notice  
8 and then you're about four or five pages in being told that  
9 your shares are being canceled and you're getting nothing when  
10 you're told, oh, by the way, you have an optional opt-out. It  
11 doesn't scream "Speak now or forever hold your peace."

12 And again, I understand Mr. Grossi, when you say, well,  
13 consideration is not a requirement, except that that's what  
14 the plan says. Specifically, in the third-party release  
15 section, the plan specifically states "in exchange for good  
16 and valuable consideration."

17 I'll be honest, I can't find consideration for  
18 shareholders under this plan. So, for those reasons, I won't  
19 hold shareholders to have given the third-party releases.

20 And finally, my last comment is both in Section -- Article  
21 9-A and Article 9-B, there is a paragraph that says this also  
22 constitutes a 9019. I don't think I have evidence of a 9019.  
23 And at the end of the day, that 9019 would have had to have  
24 been a compromise with the third-party releasors. And again,  
25 I don't think that I have evidence of that.

1 I believe that I can approve these third-party releases as  
2 part of -- as part of the Code, as part of confirmation and  
3 1123, but I don't believe that I have evidence on this record  
4 of a 9019.

5 So, with those clarifying remarks, if the Debtors agree to  
6 those terms, the Court will confirm the Debtors' plan of  
7 reorganization.

8 Mr. Grossi?

9 MR. GROSSI: Thank you, Your Honor. Thank you for  
10 the explanation. Hear you loud and clear on the Related Party  
11 definition.

12 Just to provide context, because we will do some surgery  
13 to --

14 THE COURT: Sure.

15 MR. GROSSI: -- that particular definition, part of  
16 the reason for the expansive nature of the definition is  
17 because we're dealing with financial buyers and the financial  
18 lenders and they have a Byzantine corporate structure and  
19 require some type of comfort that their managers three levels  
20 up --

21 THE COURT: Right.

22 MR. GROSSI: -- are going to be covered by the  
23 release. But I hear Your Honor's comments and we will  
24 endeavor to make it as surgical as possible.

25 THE COURT: Right. And, again, I think that there is

1 a way, like you said, to do surgery to it that is constructive  
2 in the way, like you said, if those affiliates, for lack of a  
3 better term, are part and parcel to this transaction, then  
4 there's a way to link them. But the current definition, I'm  
5 pretty sure it's me, it's my neighbor, --

6 MR. GROSSI: Understood, Your Honor.

7 THE COURT: -- it's my neighbor's sister. So it's  
8 really, really expansive as written.

9 So I understand why you put it into a separate definition  
10 so that you don't have to continue to say successors,  
11 predecessors, and assigns kind of thing repeatedly. But at  
12 the end of the day, if I'm going to reach directors and  
13 officers and shareholders and things of that nature, I'm going  
14 to have to really understand how I'm getting there.

15 But with that said, for the actual released parties and  
16 the people in their, as you said, organizational structure,  
17 I'm --

18 MR. GROSSI: And I just had one clarifying question  
19 --

20 THE COURT: Yes.

21 MR. GROSSI: -- on the 9019.

22 THE COURT: Sure.

23 MR. GROSSI: Is that related to the third-party  
24 releases, or the Debtor releases and the third-party releases?

25 THE COURT: Well, if you want to point me to where

1 the 9019 evidence is, I'm willing to take a look at it. I  
2 didn't find it.

3 MR. GROSSI: Okay.

4 THE COURT: I looked in all of the declarations,  
5 which is obviously primarily what was relied upon. Obviously,  
6 I admitted a great deal of evidence. If you want to show me  
7 where the evidence is that supports either of the two 9019  
8 findings that are contained or the 9019 provisions that are  
9 contained in the Debtor releases and in the -- perhaps for the  
10 Debtor releases, we can get there.

11 MR. GROSSI: And that's what I was going to --

12 THE COURT: Okay. Let me take a look.

13 MR. GROSSI: On the Debtor releases, you know, Mr.  
14 Borkowski did run a comprehensive investigation to look at  
15 material claims and found that those claims didn't have value.  
16 That was the genesis for the support of the 9019 standard as  
17 it relates to the Debtor releases.

18 Understand the comments with respect to the third-party  
19 releases, given the other comments that Your Honor has made.  
20 But I --

21 THE COURT: I agree with you.

22 MR. GROSSI: Thank you, Your Honor.

23 THE COURT: I agree with you.

24 MR. GROSSI: Okay.

25 THE COURT: So Article 9, Section A, that paragraph

1 can stay in there.

2 MR. GROSSI: Thank you, Your Honor.

3 THE COURT: I agree. That triggers a different part  
4 of my brain that remembers that.

5 MR. GROSSI: We will make the comments as directed  
6 and suggested by Your Honor and we'll come back to you with a  
7 proposed confirmation order.

8 THE COURT: Excellent. And so if you will file under  
9 certification of counsel a version that's obviously signed off  
10 by the Creditors' Committee for certain with respect to the  
11 settlement that was announced here today, and if you could  
12 pass that version by Ms. Kippes and Ms. Wise as well, I would  
13 certainly appreciate that. And then that version is what the  
14 Court will review, along with the form of confirmation order,  
15 for approval.

16 MR. GROSSI: Thank you.

17 THE COURT: Okay.

18 MR. GROSSI: And thank you again, Your Honor, for  
19 your Court and your staff's time and flexibility. We really  
20 appreciate the accommodations.

21 THE COURT: You're very welcome. And again, I am  
22 around all week, although I'm not on the bench on Friday, so  
23 if you're looking for me for Friday, just if you upload  
24 something make sure to let Ms. Harden know that it's there so  
25 that I can turn to it during the day.

1 MR. GROSSI: Absolutely. Thank you, Your Honor.

2 THE COURT: All right. Sir. Mr. Fox, right?

3 MR. FOX: Yeah. Mr. Fox.

4 THE COURT: Yes.

5 MR. FOX: Yes. From McGuireWoods on behalf of  
6 ClareMedica Viking.

7 We'd ask to be included in that distribution list on the  
8 certificate of counsel, as we represent one of the purchasers.

9 THE COURT: Absolutely. Absolutely. Yes. And I  
10 didn't mean to cut anyone off. I just was addressing the  
11 primary objectors, and again, with the settlement that was  
12 reached with the Committee. Fair enough.

13 MR. FOX: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. FEINSTEIN: Once again, Your Honor, Robert  
16 Feinstein from Pachulski for the Committee.

17 Your Honor, thank you, first of all, for all the -- I know  
18 we buried you with paper and this took a lot of time and  
19 attention, so we appreciate that.

20 I did want to flag one thing as part of the Committee  
21 settlement which we will bake into the plan. There'll  
22 probably be some minor changes to the confirmation order. But  
23 one of the elements was that the Committee will select the  
24 Plan Administrator.

25 THE COURT: Yes.

1 MR. FEINSTEIN: So there's a form of Plan  
2 Administrator agreement in the plan supplement that's now  
3 outdated. We'll have a -- we may well work off of that form  
4 or a different form. There'll be a different person,  
5 obviously, but also different compensation structure. We're  
6 going to try our best to get that one filed or at least  
7 identify the Plan Administrator to you simultaneous with the  
8 submission of the revised plan and order.

9 THE COURT: Right. And to the extent that it's not  
10 available, just, you know, to be filed within seven days of  
11 the entry of the confirmation order or something --

12 MR. FEINSTEIN: That would be great.

13 THE COURT: -- that you could work with and then  
14 meet.

15 MR. FEINSTEIN: That would be great, Your Honor.  
16 Thank you very much.

17 THE COURT: Thank you very much, Mr. Feinstein.

18 Also, my staff is reminding me that I think we probably  
19 carried a few motions to seal to this hearing. Are there any  
20 objections to those motions? I think those were the evidence  
21 that was filed under seal by either the Committee, the Debtor,  
22 or both.

23 Ms. Kippes?

24 MS. KIPPES: Your Honor, I didn't object. I did ask  
25 for my standard --

1 THE COURT: Of course.

2 MS. KIPPES: -- "You can give me that stuff"  
3 language.

4 THE COURT: Absolutely.

5 MS. KIPPES: Okay.

6 THE COURT: Right. And I think that was a question  
7 that I had with Ms. Harden, is so long as they're willing to  
8 give it to the United States Trustee and there's no objection,  
9 that it was going to be fine with the Court.

10 So, for the record, to the extent that the Court hasn't  
11 already done so, each of those motions is granted, so long as  
12 they are provided to Ms. Kippes on behalf of the United States  
13 Trustee's Office, noted as confidential. All right.

14 With respect to the objections, obviously, the Debtors are  
15 going to be working through those. Just let us know when  
16 those are ready to be reset, if need be. Obviously, if  
17 they're resolved by stipulations and order, that's fine with  
18 the Court. You can upload those. And again, let Ms. Harden  
19 know if they're ready for entry. Ms. Hoffman always does.  
20 Thank you for that.

21 I think that's it. Anything further?

22 MR. GROSSI: Thank you, Your Honor.

23 THE COURT: All right. You guys have a good one.  
24 Court will stand adjourned for the day.

25 THE CLERK: All rise.



(Proceedings concluded at 3:46 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from  
the electronic sound recording of the proceedings in the  
above-entitled matter.

**/s/ Kathy Rehling**

**01/31/2025**

Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

Date

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